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OF THE

SOCIETY OF COMPARATIVE LEGISLATION.

EDITED FOR THE SOCIETY BY

SIR JOHN MACDONELL, C.B., LL.D.,

AND

EDWARD MANSON, ESQ.

"Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ'ὀρθῶς ἔχον ὀφθῇ καὶ τὸ χρήσιμον."—ARIST. *Pol.* II. 1.

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SIR COURTENAY ILBERT.

ALL readers of the Journal will, the Editors are sure, be pleased to be presented with a portrait of Sir Courtenay Ilbert, to whom the Society owes its origin. Going to India in 1882 as Legal Member of the Council—after an exceptionally brilliant career at Oxford—Mr. Ilbert, as he then was, made practical acquaintance with systems of law outside that of England; and with legislatures besides that at Westminster, almost as busily engaged as it is. Upon his return to England there was brought home to him—as Parliamentary draftsman—the extent of British rule and jurisdiction. Why was there no available record of all the legislative activity beyond the seas? The thought took shape in a paper read at a meeting of the Imperial Institute on November 8th, 1894, under the chairmanship of Lord Herschell, then Lord Chancellor. Sir Courtenay urged strongly the importance of an annual summary of comparative legislation similar to that published in France by the Société de Législation Comparée. Quoting the words of the Athenians when the Spartans besought them, on Xerxes' approach, not to desert the cause of Greece, "We Greeks are bound together by a common blood, a common tongue, a common religion, and common institutions," he pointed out how everywhere throughout Greater Britain we see similar problems approached in substantially the same spirit, from substantially the same point of view, colonies and dependencies working on substantially the same lines—lines characteristically different from those on which the Frenchman and the German would naturally act. He also pointed out how institutions of home growth spring up naturally and spontaneously in Colonial soil and in that of the United States: how the problems to be met and solved were the same or similar in all the branches of the great Anglo-Saxon race.

From the seed thus sown the Society has sprung, and it has struck a root in every part of the British Empire. Sir Courtenay Ilbert has identified himself with the fortunes of the Society. He has always been ready with most valuable help and advice. The Reviews of Legislation which have appeared in the Journal from year to year owe largely their interest to his Introductions, which have summed up the salient points of the legislation and elucidated its general drift. In this number of the Journal appears a study by him of the French Civil Code. Only a month or two ago we commented on his Romanes Lecture on Montesquieu. In his *Government of India* and his *Legislative Forms and Methods* is the work of an expert who can unite learning with literary charm.

MORAL PERSONALITY AND LEGAL PERSONALITY.[1]

[*Contributed by* PROFESSOR MAITLAND.]

THE memory of Henry Sidgwick is not yet in need of revival. It lives a natural life among us, and will live so long as those who saw and heard him draw breath. Still the generations, as generations must be reckoned in this place, succeed each other rapidly, and already I may be informing, rather than reminding, some of you when I say that among his many generous acts was the endowment of a readership in English Law, of which one of his pupils was fortunate enough to be the first holder. If that pupil ventures to speak here this afternoon, it will not be unnatural that he should choose his theme from the borderland where ethical speculation marches with jurisprudence.

Ethics and Jurisprudence.—That such a borderland exists all would allow, and, as usually happens in such cases, each of the neighbouring powers is wont to assert, in practice, if not in theory, its right to define the scientific frontier. We, being English, are, so I fancy, best acquainted with the claims of ethical speculation, and in some sort prejudiced in their favour. We are proud of a long line of moralists, which has not ended in Sidgwick and Martineau and Green, in Herbert Spencer and Leslie Stephen, and we conceive that the "jurist," if indeed such an animal exists, plays, and of right ought to play, a subordinate, if not subservient, part in the delimitation of whatever moral sciences there may happen to be. I am not sure, however, that the poor lawyer with antiquarian tastes might not take his revenge by endeavouring to explain the moral philosopher as a legal phenomenon, and by classing our specifically English addiction to ethics as a by-product of the specifically English history of English law. That statement, if it be more than the mere turning of the downtrodden worm, is obviously too large, as it is too insolent, a text for an hour's lecture. What I shall attempt will be to indicate one problem of a speculative sort, which (so it seems to me) does not get the attention that it deserves from speculative Englishmen, and does not get that attention because it is shrouded from their view by certain peculiarities of the legal system in which they live.

[1] The Sidgwick Lecture for 1903, delivered at Newnham College.

The Natural Person and the Corporation.—Texts, however, I will have. My first is taken from Mr. Balfour. Lately in the House of Commons the Prime Minister spoke of trade unions as corporations. Perhaps, for he is an accomplished debater, he anticipated an interruption. At any rate, a distinguished lawyer on the Opposition benches interrupted him with "The trade unions are not corporations." "I know that," retorted Mr. Balfour, "I am talking English, not law." A long story was packed into that admirable reply.[1]

And my second text is taken from Mr. Dicey, who delivered the Sidgwick lecture last year. "When," he said, "a body of twenty, or two thousand, or two hundred thousand men bind themselves together to act in a particular way for some common purpose, they create a body, which by no fiction of law, but by the very nature of things, differs from the individuals of whom it is constituted."[2] I have been waiting a long while for an English lawyer of Professor Dicey's eminence to say what he said—to talk so much "English." Let me repeat a few of his words with the stress where I should like it to lie: "they create a body, which *by no fiction of law, but by the very nature of things*, differs from the individuals of whom it is constituted." So says Blackstone's successor. Blackstone himself would, I think, have inverted that phrase, and would have ascribed to a fiction of law that phenomenon—or whatever we are to call it—which Mr. Dicey ascribes to the very nature of things.

Now for a long time past the existence of this phenomenon has been recognised by lawyers, and the orthodox manner of describing it has been somewhat of this kind. Besides men or "natural persons," law knows persons of another kind. In particular it knows the corporation, and for a multitude of purposes it treats the corporation very much as it treats the man. Like the man, the corporation is (forgive this compound adjective) a right-and-duty-bearing unit. Not all the legal propositions that are true of a man will be true of a corporation. For example, it can neither marry nor be given in marriage; but in a vast number of cases you can make a legal statement about x and y which will hold good whether these symbols stand for two men or for two corporations, or for a corporation and a man. The University can buy land from Downing, or hire the gildhall from the Town, or borrow money from the London Assurance; and we may say that *exceptis excipiendis* a court of law can treat these transactions, these acts in the law, as if they took place between two men, between Styles and Nokes. But further, we have to allow that the corporation is in

[1] The *Standard*, April 23, 1904. *Mr. Balfour:* "The mere fact that funds can be used, or are principally used, for benefit purposes, is surely not of itself a sufficient reason for saying that trade unions, and trade unions alone, out of all the corporations in the country, commercial——" *Sir R. Reid:* "The trade unions are not corporations." *Mr. Balfour:* "I know; I am talking English, not law" (*cheers and laughter*).

[2] Professor Dicey's lecture on the Combination Laws is printed in *Harvard Law Review*, xvii. 511. See p. 513

some sense composed of men, and yet between the corporation and one of its members there may exist many, perhaps most, of those legal relationships which can exist between two human beings. I can contract with the University: the University can contract with me. You can contract with the Great Northern Company as you can with the Great Eastern, though you happen to be a shareholder in the one and not in the other. In either case there stands opposite to you another right-and-duty-bearing unit—might I not say another individual?—a single "not-yourself" that can pay damages or exact them. You expect results of this character, and, if you did not get them, you would think ill of law and lawyers. Indeed, I should say that, the less we know of law, the more confidently we Englishmen expect that the organised group, whether called a corporation or not, will be treated as person: that is, as right-and-duty-bearing unit.

Legal Orthodoxy and the Fictitious Person.—Perhaps I can make the point clearer by referring to an old case. We are told that in Edward IV.'s day the mayor and commonalty—or, as we might be tempted to say, the municipal corporation—of Newcastle gave a bond to the man who happened to be mayor, he being named by his personal name, and that the bond was held to be void because a man cannot be bound to himself.[1] The argument that is implicit in those few words seems to us quaint, if not sophistical. But the case does not stand alone; far from it. If our business is with mediæval history and our aim is to re-think it before we re-present it, here lies one of our most serious difficulties. Can we allow the group—gild, town, village, nation—to stand over against each and all of its members as a distinct person? To be concrete, look at Midsummer Common. It belongs, and, so far as we know, has always in some sense belonged, to the burgesses of Cambridge. But in what sense? Were they co-proprietors? were they corporators? Neither—both?

I would not trouble you with mediævalism. Only this by the way: If once you become interested in the sort of history that tries to unravel these and similar problems, you will think some other sorts of history rather superficial. Perhaps you will go the length of saying that much the most interesting person that you ever knew was *persona ficta*. But my hour flies.

To steer a clear or any course is hard, for controversial rocks abound. Still, with some security we may say that at the end of the Middle Age a great change in men's thoughts about groups of men was taking place, and that the main agent in the transmutation was Roman Law. Now just how the classical jurists of Rome conceived their *corpora* and *universitates*

[1] Year Book, 21 Edw. IV. f. 68: "Come fuit ajudgé en le cas del Maior de Newcastle ou le Maior et le Cominalty fist un obligation a mesme le person que fuit Maior par son propre nosme, et pur ceo que il mesme fuit Maior, et ne puit faire obligation a luy mesme, il [= l'obligation] fuit tenus voide."

became in the nineteenth century a much debated question. The profane outsider says of the Digest what some one said of another book:

> Hic liber est in quo quaerit sua dogmata quisque
> Invenit et pariter dogmata quisque sua.

Where people have tried to make antique texts do modern work, the natural result is what Mr. Buckland has happily called "Wardour Street Roman Law."[1] Still, of this I suppose there can be no doubt, that there could, without undue pressure, be obtained from the Corpus Juris a doctrine of corporations, which, so far as some main outlines are concerned, is the doctrine which has ruled the modern world. Nor would it be disputed that this work was done by the legists and canonists of the Middle Age, the canonists leading the way. The group can be a person: co-ordinated, equiparated, with the man, with the natural person.

With the "natural" person—for the personality of the *universitas*, of the corporation, is not natural—it is fictitious. This is a very important part of the canonical doctrine, first clearly proclaimed, so we are told, by the greatest lawyer that ever sat upon the chair of St. Peter, Pope Innocent IV. You will recall Mr. Dicey's words: "not by fiction of law, but by the very nature of things." Invert those words, and you will have a dogma that works like leaven in the transformation of mediæval society.

If the personality of the corporation is a legal fiction, it is the gift of the prince. It is not for you and me to feign and to force our fictions upon our neighbours. "Solus princeps fingit quod in rei veritate non est."[2] An argument drawn from the very nature of fictions thus came to the aid of less questionably Roman doctrines about the illicitness of all associations, the existence of which the prince has not authorised. I would not exaggerate the importance of a dogma, theological or legal. A dogma is of no importance unless and until there is some great desire within it. But what was understood to be the Roman doctrine of corporations was an apt lever for those forces which were transforming the mediæval nation into the modern State. The federalistic structure of mediæval society is threatened. No longer can we see the body politic as *communitas communitatum*, a system of groups, each of which in its turn is a system of groups. All that stands between the State and the individual has but a derivative and precarious existence.

Do not let us at once think of England. English history can never be an elementary subject: we are not logical enough to be elementary. If we must think of England, then let us remember that we are in the presence of a doctrine which in Charles II.'s day condemns all—yes, all—of the citizens of London to prison for "presuming to act as a corporation." We may remember also how corporations appear to our absolutist Hobbes

[1] Buckland, "Wardour Street Roman Law," *Law Quarterly Review*, xvii. 179.

[2] Lucas de Penna, cited in Gierke, Das deutsche Genossenschaftsrecht, iii. 371.

as troublesome entozoa. But it is always best to begin with France, and there, I take it, we may see the pulverising, macadamising tendency in all its glory, working from century to century, reducing to impotence, and then to nullity, all that intervenes between Man and State.

The State and the Corporation.—In this, as in some other instances, the work of the monarchy issues in the work of the revolutionary assemblies. It issues in the famous declaration of August 18, 1792: "A State that is truly free ought not to suffer within its bosom any corporation, not even such as, being dedicated to public instruction, have merited well of the country."[1] That was one of the mottoes of modern absolutism: the absolute State faced the absolute individual. An appreciable part of the interest of the French Revolution seems to me to be open only to those who will be at pains to give a little thought to the theory of corporations. Take, for example, those memorable debates touching ecclesiastical property. To whom belong these broad lands when you have pushed fictions aside, when you have become a truly philosophical jurist with a craving for the natural? To the nation, which has stepped into the shoes of the prince. That is at least a plausible answer, though an uncomfortable suspicion that the State itself is but a questionably real person may not be easily dispelled. And as with the churches, the universities, the trade-gilds, and the like, so also with the communes, the towns and villages. Village property—there was a great deal of village property in France—was exposed to the dilemma: it belongs to the State, or else it belongs to the now existing villagers. I doubt we Englishmen, who never clean our slates, generally know how clean the French slate was to be.

Associations in France.—Was to be, I say. Looking back now, French lawyers can regard the nineteenth century as the century of association, and, if there is to be association, if there is to be group-formation, the problem of personality cannot be evaded, at any rate if we are a logical people. Not to mislead, I must in one sentence say, that even the revolutionary legislators spared what we call partnership, and that for a long time past French law has afforded comfortable quarters for various kinds of groups, provided (but notice this) that the group's one and only object was the making of pecuniary gain. Recent writers have noticed it as a paradox that the State saw no harm in the selfish people who wanted dividends, while it had an intense dread of the comparatively unselfish people who would combine with some religious, charitable, literary, scientific, artistic purpose in view. I cannot within my few minutes be precise, but at the beginning of this twentieth century it was still a misdemeanour to belong to any unauthorised *association* having more than twenty members. A licence from the prefect, which might be obtained with

[1] "Considérant qu'un État vraiment libre ne doit souffrir dans son sein aucun corporation, pas même celles qui, vouées à l'enseignement public, ont bien mérité de patrie."

some ease, made the *association* non-criminal, made it licit; but personality —"civil personality," as they say in France—was only to be acquired with difficulty as the gift of the central government.

Now I suppose it to be notorious that during the last years of the nineteenth century law so unfavourable to liberty of association was still being maintained, chiefly, if not solely, because prominent, typically prominent, among the *associations* known to Frenchmen stood the *congrégations*—religious houses, religious orders. The question how these were to be treated divided the nation, and at last, in 1901, when a new and very important law was made about "the contract of association," a firm line was drawn between the non-religious sheep and the religious goats. With the step then taken and the subsequent woes of the congregations I have here no concern; but the manner in which religious and other groups had previously been treated by French jurisprudence seems to me exceedingly instructive. It seems to me to prove so clearly that in a country where people take their legal theories seriously, a country where a Prime Minister will often talk law without ceasing to talk agreeable French, the question whether the group is to be, as we say, "a person in the eye of the law" is the question whether the group as group can enjoy more than an uncomfortable and precarious existence. I am not thinking of attacks directed against it by the State. I am thinking of collisions between it and private persons. It lives at the mercy of its neighbours, for a law-suit will dissolve it into its constituent atoms. Nor is that all. Sometimes its neighbours will have cause to complain of its legal impersonality. They will have been thinking of it as a responsible right-and-duty-bearing unit, while at the touch of law it becomes a mere many, and a practically, if not theoretically, irresponsible many.

Group-Personality.—During the nineteenth century (so I understand the case) a vast mass of experience, French, German, Belgian, Italian, and Spanish (and I might add, though the atmosphere is hazier, English and American), has been making for a result which might be stated in more than one way. (1) If the law allows men to form permanently organised groups, those groups will be for common opinion right-and-duty-bearing units; and if the law-giver will not openly treat them as such, he will misrepresent, or, as the French say, he will "denature" the facts: in other words, he will make a mess and call it law. (2) Group-personality is no purely legal phenomenon. The lawgiver may say that it does not exist, where, as a matter of moral sentiment, it does exist. When that happens, he incurs the penalty ordained for those who ignorantly or wilfully say the thing that is not. If he wishes to smash a group, let him smash it, send the policeman, raid the rooms, impound the minute-book, fine, and imprison; but if he is going to tolerate the group, he must recognise its personality, for otherwise he will be dealing wild blows which may fall on those who stand outside the group as well as those

who stand within it. (3) For the morality of common sense the group is person, is right-and-duty-bearing unit. Let the moral philosopher explain this, let him explain it as illusion, let him explain it away; but he ought not to leave it unexplained, nor, I think, will he be able to say that it is an illusion which is losing power, for, on the contrary, it seems to me to be persistently and progressively triumphing over certain philosophical and theological prejudices.

You know that classical distribution of Private Law under three grand rubrics—Persons, Things, Actions. Half a century ago the first of these three titles seemed to be almost vanishing from civilised jurisprudence. No longer was there much, if anything, to be said of exceptional classes, of nobles, clerics, monks, serfs, slaves, excommunicates or outlaws. Children there might always be, and lunatics; but women had been freed from tutelage. The march of the progressive societies was, as we all know, from status to contract. And now? And now that forlorn old title is wont to introduce us to ever new species and new genera of persons, to vivacious controversy, to teeming life; and there are many to tell us that the line of advance is no longer from status to contract, but through contract to something that contract cannot explain, and for which our best, if an inadequate, name is the personality of the organised group.

Fact or Fiction?—Theorising, of course, there has been. I need not say so, nor that until lately it was almost exclusively German. Our neighbours' conception of the province of jurisprudence has its advantages as well as its disadvantages. On the one hand, ethical speculation (as we might call it) of a very interesting kind was until these last days too often presented in the unattractive guise of Wardour Street Roman Law, or else, raising the Germanistic cry of "Loose from Rome!" it plunged into an exposition of mediæval charters. On the other hand, the theorising is often done by men who have that close grasp of concrete modern fact which comes of a minute and practical study of legal systems. Happily it is no longer necessary to go straight to Germany. That struggle over "the contract of association" to which I have alluded, those woes of the "congregations" of which all have heard, invoked foreign learning across the border, and now we may read in lucid French of the various German theories. Good reading I think it; and what interests me especially is that the French lawyer, with all his orthodoxy (legal orthodoxy) and conservatism, with all his love of clarity and abhorrence of mysticism, is often compelled to admit that the traditional dogmas of the law-school have broken down. Much disinclined though he may be to allow the group a real will of its own, just as really real as the will of a man, still he has to admit that if n men unite themselves in an organised body, jurisprudence, unless it wishes to pulverise the group, must see $n + 1$ persons. And that for the mere lawyer should I think be enough. "Of heaven and hell he has no power to sing," and he might content himself with a phenomenal reality—such reality, for example, as the lamp-post has

for the idealistic ontologist. Still, we do not like to be told that we are dealing in fiction, even if it be added that we needs must feign, and the thought will occur to us that a fiction that we needs must feign is somehow or another very like the simple truth.

Why we English people are not interested in a problem that is being seriously discussed in many other lands, that is a question to which I have tried to provide some sort of answer elsewhere.[1] It is a long, and you would think it a very dreary, story about the most specifically English of all our legal institutes; I mean the trust. All that I can say here is that the device of building a wall of trustees enabled us to construct bodies which were not technically corporations and which yet would be sufficiently protected from the assaults of individualistic theory. The personality of such bodies—so I should put it—though explicitly denied by lawyers, was on the whole pretty well recognised in practice. That something of this sort happened you might learn from one simple fact. For some time past we have had upon our statute book the term "unincorporate body." Suppose that a Frenchman saw it, what would he say? "Unincorporate body: inanimate soul! No wonder your Prime Minister, who is a philosopher, finds it hard to talk English and talk law at the same time."

One result of this was, so I fancy, that the speculative Englishman could not readily believe that in this quarter there was anything to be explored except some legal trickery unworthy of exploration. The lawyer assured him that it was so, and he saw around him great and ancient, flourishing and wealthy groups—the Inns of Court at their head—which, so the lawyer said, were not persons. To have cross-examined the lawyer over the bodiliness of his "unincorporate body" might have brought out some curious results; but such a course was hardly open to those who shared our wholesome English contempt for legal technique.

The Ultimate Moral Unit.—Well, I must finish; and yet perhaps I have not succeeded in raising just the question that I wanted to ask. Can I do that in two or three last sentences? It is a moral question, and therefore I will choose my hypothetical case from a region in which our moral sentiments are not likely to be perplexed by legal technique. My organised group shall be a sovereign state. Let us call it Nusquamia. Like many other sovereign states, it owes money, and I will suppose that you are one of its creditors. You are not receiving the expected interest and there is talk of repudiation. That being so, I believe that you will be, and indeed I think that you ought to be, indignant, morally, righteously indignant. Now the question that I want to raise is this: Who is it that really owes you money? Nusquamia. Granted, but can you convert the proposition that Nusquamia owes you money into a series of propositions

[1] Maitland, Trust und Korporation, Wien, 1904 (from Grünhut's Zeitschrift für das Privat- und Öffentliche-Recht, vol. xxxii.).

imposing duties on certain human beings that are now in existence? The task will not be easy. Clearly you do not think that every Nusquamian owes you some aliquot share of the debt. No one thinks in that way. The debt of Venezuela is not owed by Fulano y Zutano and the rest of them. Nor, I think, shall we get much good out of the word "collectively," which is the smudgiest word in the English language, for the largest "collection" of zeros is only zero. I do not wish to say that I have suggested an impossible task, and that the right-and-duty-bearing group must be for the philosopher an ultimate and unanalysable moral unit: as ultimate and unanalysable, I mean, as is the man. Only if that task can be performed, I think that in the interests of jurisprudence and of moral philosophy it is eminently worthy of circumspect performance. As to our national law, it has sound instincts, and muddles along with semi-personality and demi-semi-personality towards convenient conclusions. Still, I cannot think that Parliament's timid treatment of the trade unions has been other than a warning, or that it was a brilliant day in our legal annals when the affairs of the Free Church of Scotland were brought before the House of Lords, and the dead hand fell with a resounding slap upon the living body. As to philosophy, that is no affair of mine. I speak with conscious ignorance and unfeigned humility; only of this I feel moderately sure, that those who are to tell us of the very nature of things and the very nature of persons will not be discharging their duties to the full unless they come to close terms with that triumphant fiction, if fiction it be, of which I have said in your view more than too much, and in my own view less than too little.[1]

[1] In the following list will be found the titles of a few French books which (by way of historical retrospect or legal exposition or juristic speculation or political controversy) illustrate competing theories of legal personality and bring them into close relation with a recent and interesting chapter of French history, namely the campaign against the *congrégations*. Some of these works (see especially M. Michoud's articles) will also serve as an introduction to German speculation.

J. Brissaud, *Manuel d'histoire du droit français*, pp. 1769—1785: Paris, 1899. M. Planiol, *Traité élémentaire de droit civil*, t. i. pp. 259—290 (*Les personnes fictives*); t. ii. pp. 618—623 (*Association*): Paris, 1901. G. Trouillot et F. Chapsal, *Du contrat d'association—Commentaire de la Loi du 1er Juillet 1901*: Paris, 1902. M. Vauthier, *Études sur les personnes morales*: Bruxelles et Paris, 1887. Le Comte de Vareilles-Sommières, *Du contrat d'association, ou, La loi française permet-elle aux associations non reconnues de posséder?* Paris, 1893. Le Marquis de Vareilles-Sommières, *Les personnes morales*: Paris, 1902. L. Michoud, "La notion de personnalité morale" (*Revue du droit public et de la science politique*, t. xi. pp. 1, 193: Paris, 1899). A. Mestre, *Les personnes morales et la problème de leur responsabilité pénale*: Paris, 1899. M. Hauriou, "De la personnalité comme élément de la réalité sociale" (*Revue générale du droit, de la législation et de la jurisprudence*, t. xxii, pp. 1, 119: Paris, 1898). D. Négulesco, *Le problème juridique de la personnalité morale et son application aux sociétés civiles et commerciales*: Paris, 1900. A. Gouffre de Lapradelle, *Théorie et pratique des fondations perpétuelles*: Paris, 1895. F. Garcin, *La mainmorte,—de 1749 à 1901*. Paris et Lyon, 1903. J. Imbart de Latour, *Des biens communaux*: Paris 1899. P. M. Waldeck-Rousseau, *Associations et congrégations*: Paris, 1901. E. Combes, *Une campaigne laïque (1902—1903)*, Préface par Anatole France: Paris, 1904.

SOME QUESTIONS IN THE LAW OF NEUTRALITY.

[*Contributed by* THOMAS BATY, ESQ.]

Contraband.—The law of neutrality has received such full discussion of late, that a detailed exposition of its main features would be out of place. We may limit our enquiry to the investigation of doubtful points. There is, in the first place, the question of what may be regarded as contraband. As is well known, British and American practice has hitherto been to regard all articles of prime use in war, and some articles *ancipitis usus* (such as saltpetre, pitch, hemp, ship-timber, etc.) as "absolute" contraband, confiscable to whatever port of the enemy destined—whilst all other articles *ancipitis usus* are, as "occasional" contraband, liable to seizure under particular circumstances. What those circumstances are, is clear ftom the cases of the *Jonge Margaretha*,[1] the *Zelden Rust*,[2] the *Frau Margaretha*,[3] and the *N.S. de Begona*.[4]

They do not consist, as is often assumed, in a probable destination for the enemy's naval or military use. Such a probable noxious destination is the implied ground of confiscation in every case of contraband. The circumstances under which "occasional" contraband becomes such are found in the blunt fact of destination to an enemy's port of naval or military equipment. The enormous importance of adopting a plain objective test of this kind, in lieu of vague, albeit high-sounding, permissions to stop traffic in innocent commodities, on general grounds of its being conducted in the interests of the enemy's military operations, is obvious. A belligerent who wishes to seize a cargo will seldom be at a loss for a plausible ground of inferring a probable military hostile use for it. Objections to the inference, in individual cases, must involve diplomatic friction. Repeated objections will rapidly result in unbearable diplomatic tension. But the mere fact of immediate destination to a particular port, apparent by the ship's papers and situation, is easily appreciated, and decisive. Wheaton thinks that Scott abandoned it as a test (after asserting it as normally a conclusive one in the *Jonge Margaretha*[5]), in the *Charlotte*.[6] But the somewhat awkward language of the report misled

[1] 1 C. Robins. 192.
[2] 6 C. Robins. 93.
[3] *Ibid.* 92.
[4] 5 C. Robins. 97.
[5] 1 C. Robins. 192.
[6] 5 C. Robins. 305.

him, as Dana shows.[1] The *Jonge Margaretha* was a case of "absolute" contraband; and when Scott observes that the quality of the port makes no difference, all he means is to put it beyond doubt that the case is not one of "occasional" contraband at all. (The cargo was one of manufactured spars.) "Are there any cases," asked Scott, in the *Nostra Signora de Begona, apropos* of a cargo of rosin, "in which this article has been held to be contraband, on a destination to a port merely mercantile? If it had been going to a military port of the enemy, I should have had no hesitation,—going to a mercantile port, it is not, I think, so decidedly of a warlike nature as to be excluded from the favourable considerations that are applied to other articles *ancipitis usus*." The distinction was no new one. Rosin on board the *Santa Bona Ventura* for Nantes had been duly restored by the Court in 1747.

So limited, by so strict a test, the doctrine of "occasional" contraband was not unnatural, and when qualified by pre-emption did not amount to a blockade of fortified ports. It was proper to stop bullets which were going to France, and natural to stop cheese which was going to Brest. But it was not proper to stop cheese which was going to Havre. The modern assumption to stop provisions, cotton and the like, on the mere probability that they may have a military use, and to confiscate, instead of buying, them, is a wild extension of the doctrine. Yet, so little versed are the cabinets of modern times in the ways of maritime war, that their protests have a curiously ineffective air. When Mr. Hay and Lord Lansdowne protest against the seizure of the *Calchas*, laden with flour, timber, machinery, and cotton, they are countered at once by the Russian reply that they themselves recognise that cotton, oil, and provisions can be seized as "occasional" contraband. When they answer, "Yes, but they must be destined for military use," the Russian has simply to say that he believes on grounds satisfactory to himself that these cargoes are so destined. The whole matter then becomes a diplomatic squabble about evidence, full of irritating friction, but destitute of result unless we choose to go to war on a miserable dispute of fact. Instead of returning on the British criterion of the character of the port of destination, Lord Lansdowne put forward the suggestion that contraband should only be seized in the neighbourhood of the seat of war.[2] It is unnecessary to consider this novel idea, further than to remark that contraband is not always forwarded to the temporary seat of war, and that it is sometimes advisable to stop it before it gets far on its way. He was eventually put off with "assurances," first as to provisions, and then as to other innocent goods, and four months ago Lord Percy told Sir M. Bhownaggree that no fresh cause of complaint had arisen.[3] But we now find the St. Petersburg Court of Appeal condemning raw cotton and timber (though not the flour). The prize

[1] Dana's *Wheaton*, § 489 (note).

[2] Hardinge to Lamsdorff, October 11th, 1904.

[3] Hardinge to Lansdowne, September 16th, 1904, and *vide Times*, February 15th, 1905.

law of Japan (*vide* Clunet, *Jour de D. I. Priv.* 1904) confiscates provisions, telegraphic *matériel*, railway ditto, coal, etc., "dans le cas seulement où ils sont destinés à l'armée ennemie, ou lorsque le navire . . . se dirige vers un port ennemi et qu'on peut présumer qu'ils sont destinés à être utilisés pour la guerre par l'armée ennemie." It is hard to see how the second of these cases includes any possibilities which are not covered by the first: unless *destinés* means "consigned" in the first case and "intended" in the second. In any event, the proposition is too broad. More clearly beyond due limits is the Russian ukase (Clunet, 1904, p. 476; 1905, 477) of February 14th, 1904, which treats all combustibles, tents, kitchens, smithies, ships' boilers and machinery, telegraph and railway plant, as absolute contraband, and provisions, horses, etc., as contraband when forwarded "pour le compte ou à destination de l'ennemi"—or "aux frais ou à l'ordre de l'ennemi" as another translation expresses it.

Changed Conditions of Commerce.—In support of the wide powers claimed by the Russians, it may be urged that the conditions of commerce have altogether changed since the French revolutionary wars. Ships can so easily evade cruisers by the help of steam, it is said, that we must kindly allow the belligerent a little more latitude. This is not a convincing argument for allowing him a great deal of increased latitude in dealing with the commerce of modern times—a commerce highly organised, sensitive, and accustomed to a regularity which could not have been conceived in the haphazard days of the old sailing ships. Moreover, the fast merchantmen of the day can be counted with little trouble. The great bulk of the trade of the present seas is done by ten- and twelve-knot steamers. Professional observers have deliberately expressed the opinion that the net result of steam and improved gunnery has been to place the advantage with the fast belligerent cruiser. The old sailing ship used frequently to escape from the chasing frigate: "A stern chase is a long chase." But there is no getting away from a six-inch gun. Certainly, there is no such alteration of the balance as to make it necessary to create a new law of nations. But it is further urged that railways have modified the problem. Inland transit, it is said, is now so perfect, that it does not much matter where a ship is going—her noxious merchandise can always be taken on without trouble to a dangerous place. Fortunately, we know Scott's opinion of this argument. In the *Jonge Margaretha*,[1] in pronouncing the condemnation of certain *absolute* contraband, he recognised this very possibility that the goods might be forwarded by land to a place where they would become dangerous; but in the *Zelden Rust*,[2] where the land transit was the easy one from Quimper to Brest, he expressly refused to take its facility into consideration for the purpose of condemning as "occasional" contraband cheese which was going to the former place. So, in the *Imina*,[3] he refused to take into account the proximity of Emden to Amsterdam. The same argument—scarcely, one

[1] *Supra*, p. 202. [2] *Ibid.* [3] 3. C. Robins. 167.

would think, a plausible one—has been invoked to justify the seizure of contraband when the port of destination is neutral, on the ground of a suspected ultimate intention that it shall reach the enemy. Like the assertion of a right to confiscate "occasional" contraband on mere plausible evidence of a warlike destination, this doctrine of "continuous voyage" is justified, in substance, by a hopeless appeal to modern changed conditions, and in form by an illegitimate importation of civil law methods into the working of prize law. Judges are prone, after a long period of peace, to treat prize cases by the methods of municipal law. Yet the theory of evidence in prize is entirely different from that of the civil law.

Condemnation of Prize "Out of its own Mouth."—The wise reluctance of prize tribunals to frame their own partial view of the facts early led to the clear establishment of the principle (enunciated as the very foundation of prize law by such masters as Story,[1] Scott, Lee, Nichol, and Mansfield [2]) that the ship can only be condemned "out of her own mouth." It is only on the ship's papers and the declarations emitted by the ship's company that the Court can proceed: it cannot infer that they are wrong. If, indeed, they are incomplete, ambiguous, or contradictory, it can draw its own conclusions. But if they disclose a coherent and entire voyage, the prize court cannot go behind them. It is not like a civil suit, where the tribunal must balance probabilities. Given, then, a fair course for a neutral destination, the prize judge cannot say that the voyage of ships or goods or both was meant to be "continued" further, however certain he may be of it. The absolute necessity of this rule, securing, as it does, the freedom from question of all traffic to neutral ports, is easily appreciated when we reflect that otherwise arrests on suspicion, with all their attendant loss and vexation, would be multiplied a hundred-fold. To justify them, a captor would have to show, not a fact, but a plausible piece of guess-work. And a little extra plausibility would entail condemnation. Of course, the analogy of "continuous colonial voyages" is *nil ad rem.*[3] The ship engaged in a "colonial" voyage was seized and condemned on a plain fact—that of making for a belligerent port. Then it became material to enquire where she had originally come from, and to piece two admitted voyages together. But that has no analogy whatever to constructing an imaginary future voyage, and welding it on to the admitted one.

The unfortunate guesses at truth which the United States Courts, in their inexperience at the time of the Confederate War, permitted themselves to make, regarding the ultimate destination of cargo, were not protested against at the time as they might have been. Gessner suggests that we thought the doctrine would come in useful. But the recent attempt to seize a German

[1] Wheaton's Rep. vol. i. Appendix.

[2] See Letter of Scott and Nichol to Jay (U.S. Minister) (1794) (quoted *apud* Phillimore), and Report of Lee, Murray, etc., to the Crown (1753), also French Règlements of 1778, Art. XI. (De Martens, *Traités*, iii. 22).

[3] See Hall, *International Law*, 2nd ed.

ship bound for the neutral port of Delagoa Bay was promptly protested against by Count Hatzfeldt and was not insisted on. In the present war, the principal case of a similar seizure is afforded by the *Allanton*. The seizure was there justified, also, by the previous conduct of the steamer; but it was scarcely attempted to defend it on that ground. The really serious allegation lay in the assertion that the *Allanton's* voyage was not what her papers stated. She cleared[1] from Muroran (Japan) for a voyage to Singapore and Calcutta, thence to Karachi with coal, and afterwards with cotton and seeds to Europe; and was captured in the Inland Sea, on a straight course for Singapore. The Appeal Court at St. Petersburg, on the application of the Admiralty Proctor, dismissed the ship and cargo, but without costs and expenses. Possibly the previous conveyance of coal to Japan was regarded as disentitling the owner to indemnity. The decision is otherwise satisfactory, although the Vladivostock Court had inferred a destination, in refreshingly wide terms, to "some" Japanese "or Corean" port—or to the Japanese fleet. It will not be wondered at that some space has been devoted to this question of allowing captors to ignore the plain neutral destination of the ship; because if it is once decided that the belligerent may seize goods which he can plausibly represent as destined ultimately for the enemy, the Declaration of Paris will be deprived of much of its force.[2] It was supposed to secure the freedom of enemy goods on a neutral ship; but of what avail is this when coal, machinery, rails, and chemicals (not to speak of provisions, cotton, pig-iron, and other more disputable commodities) can be seized anywhere as contraband, on the easy condition of making out a plausible case of suspicion? Many continental jurists, following Heffter, draw a distinction between cases of (1) blockade and (2) contraband, captured with a neutral immediate destination, and declare that, in the latter case, the spirit and not the letter of the institution must be regarded, and the ultimate intention alone considered. It is, however, the very function of law to define the vague spirit by the ascertained letter; and no word of explanation is vouchsafed by these writers as to the reasons for the exemption from the domain of "spirit" of the law of blockade.

"**Occasional Contraband.**"—There would indeed seem much to be said for the abandonment by Britain, Japan, and the States of the doctrine of "occasional" contraband altogether. Not to speak of the advantage of bringing our view of international law into line with that of the other Powers, there remains the grave inconvenience which our neutral trade sustains by the rule when we are at peace, and the great danger which our communications would sustain in time of war, by the operation of the doctrine. It is urged that an enemy which was in a position to do so

[1] *Times*, October 24th, 1904.

[2] On the whole matter of continuous voyage, see Twiss, in *Law Magazine and Review*, November 1877; the present writer's *International Law in S. Africa*, ch. i.; and Mr. Evart's *Brief in the "Springbok" Case* (Inner Temple Tracts, 1 H).

would cut off our trade without caring whether its action was legal or not. Such a view leaves out of account the possibility that a nation, hesitating to take the step, might well be determined one way or the other by its legality, and the freedom from possible complications which legality brings. Law (even police law) is not everything—but it is something. The great convenience of having one class of contraband alone is patent. A fruitful source of dispute would be dried up. The objection has been made that the abolition would not make proper account of the fact that certain articles, harmless otherwise, would be of great harm if they reached the enemy's fleet or army. But it is precisely because they will be harmful if they reach the enemy's fleet or army that guns and sabres are contraband. They will not do much harm in the hands of ministers of state. The true rule, it is submitted, is that a thing is only capable of being excluded from the enemy's country as contraband, if it is of so markedly military a character that it may fairly be so excluded *semper, ubique et adversus omnes.*

Absolute Contraband.—Turning now to the list of "absolutely" contraband things, we note that the extreme French school, represented by Hautefeuille and his followers down to Mr. Kleen, which would restrict it narrowly to weapons and ammunition and their materials, obtains little respect in practice, though founded on the opinion of so great a jurist as Bynkershoek. Some willingness has indeed been shown to admit coal to the list.[1] Coal for the naval port of Vladivostock is within the British definition of "occasional" contraband; but in spite of the British official protests against the Russian inclusion of it in the list of articles noxious by their nature, it seems to be widely considered that the importance of coal is such that, despite its industrial uses, it may fairly be treated on a level with sulphur, hemp, pitch, and spars as "absolute" contraband. The correctness of this view may be doubted. Coal is of universal and vital civil employment. Timber and metal, not specially adapted for ships, were not considered contraband in former times. The only real analogue of coal was horses. And Russia consistently refused to admit that horses could be contraband. Some disposition is shown in modern times to include as contraband all the ancillary features of a modern campaign—the railway plant, the telegraph *matériel*, the commissariat. It can hardly be doubted that this is wrong, unless the articles bear *on their face* their military destination. Important and necessary as they may be for the conduct of warfare, they are not of that immediate fighting value which is of the essence of contraband. Carts and camp-kettles were never included as contraband in the old treaties; neither were pens and ink, nor field-glasses. If such articles are included, we at once let in an enquiry as to the intention to use them

[1] So lately as 1861, the Netherlands Minister says: "Pit-coal is not reputed contraband (if not at most, and within a recent time only contraband *par accident*)" (Van Zuelen to Pike, October 15th, 1861).

for military purposes—and such an inquisition into intention is precisely what a belligerent ought not to be allowed to embark upon. The importance, it may be said once again, is paramount, of confining a belligerent to plain facts. If any one says that such a limitation might be all very well for a barbarous age like the eighteenth century, but that we are now so advanced in justice and impartiality that we can universally dispense with such safeguards, he is to be congratulated on a sunnier vision of human nature than most people entertain.

The Declaration of Paris.—The real importance of the subject of contraband at the present day is that it provides a loophole to the Declaration of Paris. That declaration, when it made enemy goods free on a neutral ship, included the goods of the enemy government. The temptation is strong to seize them as contraband. It will easily be imagined that a belligerent could see, with more or less composure, a neutral's goods (not clearly contraband) going to the enemy's country as a mercantile speculation; whilst it is a very different matter to watch such supplies when actually consigned to the enemy government passing safely on neutral vessels. The old-time belligerent would in many cases simply have seized the cotton, corn, oil, and coal on the plea that it was enemy property: this can no longer be done, and he attempts to seize it as contraband. Probably the declaration requires modification:[1] such a course would be preferable to an unsettlement of the accepted general law. It is not certain whether the Russian ukase, subjecting goods forwarded "aux frais ou à l'ordre *de l'ennemi*" to confiscation, meant to include only goods ordered by the enemy government, as distinct from those ordered by private individuals. If it is so limited, it forms the basis of a reasonable understanding—provided that it is extended to telegraph and railway plant, and the other matters which the Russian practice is to treat as absolute contraband.

The export of a ship to a belligerent is a different matter again. Ships have been included in the list of contraband in various treaties. But the starting of a ship from neutral territory is, or may be, the departure of a hostile expedition. Since the *Alabama* incident, and the cognate cases of the *Shenandoah*, *Florida*, and *Georgia*, nations have been extremely nervous about the supposed duty of stopping such expeditions at all hazards. It can scarcely be that a neutral nation is bound, by the outbreak of war, to be so extremely solicitous about the interests of belligerents. She may be liable for *culpa lata*, but hardly more. The departure of the *Caroline*[2] for Libau cannot be regarded in the imposing light of an expedition. It is not probable that she was either commissioned or furnished with torpedoes.

[1] Some such recognition of the dangerous character of goods consigned to (or to the agent of) an enemy *government* is found in the British-Russian correspondence of August to October, 1904.

[2] Curiously, a *Caroline* was the subject of a lively discussion between Britain and the United States sixty years since.

However obnoxious to British law her sailing might be, the Government can scarcely be charged with neglect in their dealings with her. The builders' explanations were intelligible, and the coast-guard did their office so far as they could. The supply of an unarmed ironclad by a private builder to a belligerent is, clearly, internationally valid—although Mr. Adams on one occasion took up the absurd position that the departure of Confederate rams from Liverpool[1] would be "war." Britain, however, has so far refrained from releasing the embargo on the vessels built for Japan, and Russia has failed to find a vendor of similar useful articles of commerce; except that a German firm has supplied her with several light auxiliary cruisers. The connection of the Hamburg-American Line, the firm in question, with the Imperial Government, brings the supply very near the border-line of impropriety, if it does not actually cross it. The supply of old Swedish frigates to the Spanish colonies, promptly cancelled upon knowledge of the facts by the Swedish Government, will be recalled in this connection. The two valuable ships built at Messrs. Ansaldo's yard at Genoa, for the Argentine, and sold to Japan prior to the war, were navigated out to the East under the command of British officers, who were unaccountably removed from the list of the Naval Reserve in consequence. Frequent rumours have credited the South American republics with the amiable desire to place their navies, for a consideration, at the service of Russia. The first result of such an act would, it may be presumed, be to justify Great Britain in permitting the exit of the new Japanese ships, to redress the balance.

Use of Neutral Territory as a Base.—Closely connected with the despatch of an expedition, or its technical equivalent, the sailing of an armed ship, from neutral territory, is the use of neutral territory as a base. Neither nation appears to have tried to enlist troops outside its own limits, beyond perhaps recalling its subjects who were liable to service. But the use of the Suez Canal and of French ports by the Russians has been open to comment. The rights of belligerents to traverse the canal are conceded by treaty. But it is by no means clear that a vessel which, by treaty, ought not to be in the Mediterranean or Red Sea at all is necessarily entitled to treaty privileges. The Dardanelles being closed to Russian warships by the Treaty of London, it is hard to see why cruisers which pass the Straits disguised as merchantmen can claim as of right the benefit of the Suez Canal Convention. It is no wrong to break a treaty towards them, when by their very presence they are breaking another. As to their power to make captures, the question may be more open: that right does not rest on treaty, but on general law. *Fierit non debuit: factum tamen valeat*—subject to possible damages. The *Malacca* and *Formosa* (fortunately released after some delay) could hardly be taken by force out of Russian hands on the high seas. The hoisting of the Russian naval flag on board was probably a rather futile warning against

[1] Letter to Earl Russell, September 5th, 1863. Cf. the *Santissima Trinidad* (7 Wheaton 283, 337).

this, as it admitted that the status of a prize once incorporated in the captor's navy cannot afterwards be questioned. But they might well have been intercepted and restored, when within the Turkish jurisdiction [1] at Ismailia which their captors had infringed at Constantinople. Regarding the use of French waters by the Baltic fleet, we are confronted by a difficult question of fact. There is no law obliging nations to send away foreign warships in twenty-four hours, despite Lord Selborne's surprising assertion to the contrary. There are great difficulties in the way of the enforcement of any such rule, as is shown by the case of the *Mandjur*—permanently neutralised because the Chinese could not decently order her out to be sunk by her enemies. One is not bound to dismiss one's friend because he is another's enemy. But has the use of Annamese and Malagasy harbours by the Russians been so extensive, repeated, prolonged, and beneficial as to constitute them a base of operations? On the whole, it seems difficult to say so, with the imperfect means at our disposal. Certainly their use of French waters is quite as conspicuous as that which the *Florida* and *Shenandoah* made of British colonial waters. But those cases were eventually decided under unfortunate special rules at Geneva, and Chief Justice Cockburn did not think the *Shenandoah*, at any rate, had made a base of Melbourne. It might be argued that the presence of an entire fleet casts a different aspect on the matter; there is, no doubt, force in the observation. On the other hand, the coercive force of France in Annamese waters is small. Her moral influence is nevertheless adequate, and indeed she appears to have secured the removal of the Russian fleet from one anchorage to another again and again. It may be questioned whether more could be expected. The question is an entirely new one. Fleets, in past times, stayed in neutral harbours without question. The defeated allies, after a brush with the Danes in 1864, retreated into Heligoland waters and stayed there, without anybody's thinking of "interning" them. The "internment" of vessels is an absolutely novel idea. An army, crossing into neutral territory, may properly be "interned," because foreign armies are

[1] Lord Stowell dealt with this very case of the Dardanelles in the *Twee Gebroeders* (3 C. Robins 353) and said: "It would be a proposition which could not be maintained in a full universal extent, that the passing over water claimed as neutral territory would vitiate any ulterior capture made on a third party. Suppose the case of a war between . . . France and Russia, and the Dardanelles to be the pass in question; could it be said . . . that captures made beyond this point of passage over neutral water territory would be invalidated on any principle of the law of nations? Where a free passage is generally enjoyed, . . . no violation of territory is committed if the party, after an inoffensive passage, conducted in the usual manner, begins an act of hostility in open ground. In order to have an invalidating effect, it must at least be either an *unpermitted* passage, over territory where permission is regularly requested; or a passage under a permission obtained on false representation, and suggestions of the purpose designed. In either of these cases, there might be an original misfeasance and trespass, that travelled throughout and contaminated the whole; but if nothing of this sort can be objected, I am of opinion that a capture otherwise legal is in no degree affected by a passage over territory in itself otherwise legal and permitted."

anomalies on neutral soil. But a foreign warship, defeated or wary, is in a perfectly proper and normal position in a friend's port. Why she should be required to disarm is inconceivable. She cannot be permitted to renew her damaged armament and her spent shells—and that should be sufficient for any one. However, the *Cesarewitch*, *Askold*, and *Grosovoi* were "interned" at Kiaochao, the *Diana* (in obedience to the Czar's injunction) at Saigon, the *Lena* at San Francisco, and the *Jernchug*, *Oleg*, and *Aurora* (apparently) at Manilla: a precedent which may have very awkward consequences. It is difficult to speak with entire patience of the new demand that the neutral rescuer of wounded and drowning seamen after a naval engagement shall be bound to become their jailer. The Russians rescued by the *Talbot*, *Elba*, and *Pascal* at Chemulpo—(their United States consort was less sentimental)—were demanded by the Japanese, but were ultimately sent to Russia on *parole*. The French official reply to the demand for the surrender of the crew of the *Alabama* as prisoners of the *Kearsarge* is pleasanter reading—"Je ne puis non plus comprendre comment les autorités des Etats-Unis peuvent prétendre retenir des prisonniers dans les limites de l'empire français."

Neutral harbours are safe from the operations of war. Corea cannot be said to have been neutral in the present war, as it has been under the continuous domination of Japan, even before accepting a Japanese protectorate of a very complete character. China, on the other hand, is certainly neutral. The Japanese contention that she can be regarded as neutral *quoad* part of her territory and belligerent (ally or enemy?) *quoad* the seat of war, is obviously untenable. The seizure of the *Rechitelni* in a Chinese harbour is the one signal mistake in international law which the Japanese have made. Russia could not complain (except against China); but certainly China could. Probably Japan was aware that China would not feel particularly insulted.

Equipment.—Regarding the supply of coal to the Russian fleet, the Foreign Office put out an intimation early in 1905 that it was "inadmissible" for ships from this country to follow the Russians with coal. No Order in Council had been issued prohibiting the export of coal under the Customs Consolidation Act, and the case does not appear to come within the Foreign Enlistment Act, 1870. A ship may not, indeed, be equipped or despatched from Britain as a storeship for the naval service of Russia. But a collier carrying coal as a commercial speculation to the Russian fleet and not under the Russian admiral's immediate control is not a Russian storeship: she is in the service of her owners. The *Gauntlet*[1] was decided on the identity of tug and tow; a tug towed a French prize into Dunkirk and was in her every motion under the immediate control of the French prize-master. Nor can the coal-exporter be said to "equip" the Russian fleet. The act is not done, as the statute

[1] *Duke* v. *Elliott*, L.R. 4 P.C. 184.

requires, within the kingdom. And if it were held to be so because of its inception here, it is perfectly clear that the clause (8[3]) directed against equipment is *in pari materia* with the clauses against building, despatching, and commissioning—all four referring to a ship "*intended* to be employed" by a belligerent [*scilicet*, not already so employed]. This is clear from a comparison with the older Foreign Enlistment Act and the United States Acts upon the model of which it was framed; and from a consideration of s. 10, which is specifically directed against the augmentation of the force of a ship *already* in foreign service. From this comparison it will be evident that the two topics of supplying a belligerent with an additional ship and supplying his ships with additional equipment have been kept apart from the first, and that the scope of s. 8 of the 1870 Act is concerned with the former. Were it otherwise, every keg of water or sack of potatoes supplied to a belligerent warship would require a licence under the royal sign-manual—an absurd result.[1]

Sinking Neutral Prizes.—The sinking of neutral prizes, though perhaps allowed[2] by Russian regulations, and countenanced by writers of authority, seems to be an entire innovation, and an inadmissible one. It has been asserted that Sir W. Scott, in saying[3] that destruction can only be justified by payment of full compensation, meant to admit a right of destruction subject to an indemnity to the owner. This is an inadmissible construction, in the light of the context. "Where doubtful whether enemy's property and impossible to bring in," he says, "the safe and proper course is to dismiss." This obviously indicates his opinion that destruction is improper. It can, indeed, be justified in an isolated case of the most immediate and grave importance to the captor's interests by prompt and full explanation and reparation. But that is not the same thing. There seems at first sight to be little difference between saying that you must not do a thing (and if you do, you must pay damages)—and saying that you may do it if you are prepared to pay the costs. But there is a vital difference. The former position makes the act an illegal one: its repeated performance would cause a grave situation between the Powers concerned. It would be intolerable if belligerents were to be allowed to sail the seas sinking neutral vessels and running up bills which they might never be able

[1] The *Times* comments, January 18th, 1871, cited U.S. Dipl. Corr. 1871, p. 428, are severe on the For. Enlist. Act. "The war between France and Germany broke out . . . and it was then remembered at the F.O. that our Foreign Enlistment Act was very imperfect. . . . A bill was accordingly introduced in hot haste, and hurried through Parliament. It included much of perhaps doubtful policy." See as to the export of coal, the writer's article in the *Monthly Magazine*, January, 1905.

[2] It does not seem certain that Art. 21 of the Russian Prize Regulations contemplates the case of neutral ships at all. One of the reasons which it admits for destruction is "danger of recapture by the enemy"—and this is appropriate only to the enemy's ships.

[3] In the *Felicity*, 2 Dods. 386.

to discharge. It is said that recent French and American practice is to invest commanders with a power of destruction; but, in the latter case, at all events, the official instructions, though containing general regulations as to the destruction of prizes, do not specifically apply them to neutral prizes. If it were admissible to sink neutral prizes on grounds of convenience, a blockading vessel would seldom do anything else, and effective blockades would be extremely easy of establishment. The real point, however, is not what nations have authorised, but what they have done. When it can be proved that in any modern war neutral ships have been sunk merely because of the difficulty of taking them *infra præsidia*, it will then be time to consider the legality of the practice. Meanwhile, we must consider the Premier to have been justified in informing the House of Commons that the captor's convenience was no excuse for sinking the *Knight Commander* (and, we may add, the *Hipsang* and *St. Kilda*).[1]

Then, as to the confiscation of vessels laden wholly or mainly with contraband goods. This practice was adopted by France in 1778, when at the height of her maritime power. If the contraband exceeded three-fourths of the total cargo, the ship was considered confiscable. The pretension is condemned by French writers such as Ortolan,[2] and is disclaimed by British authority. In the *Neutralitet*[3] (Burning, master), Sir W. Scott recognised reluctantly that the extension of the penalty of trading beyond the contraband goods had been definitely abandoned by Europe. "The modern rule of the law of nations is, certainly, that the ship shall not be subject to condemnation for carrying contraband articles. The ancient practice was otherwise; and it cannot be denied that it was perfectly defensible on every principle of justice." He then goes on to enumerate the exceptional cases in which the old rule still holds good; and these are very exceptional indeed. Both Japan and Russia nevertheless appear to confiscate contraband-laden ships. The confiscation of the German *Thea* at Vladivostock proceeded on the different and intelligible ground (abandoned on appeal) that she was engaged in the close coasting trade of the enemy and therefore virtually incorporated into its mercantile navy; but the pretension was put forward by Russia to confiscate ships carrying over 50 per cent of contraband cargo. This was at once protested against by Great Britain,[4] but it was reiterated;[5] and we still hear of Japanese confiscations of coal-ships proceeding to Vladivostock; yet Vladivostock does not appear to be blockaded. The Japanese capture of the *Nigretia* was motived by the carriage by that vessel of Russian officers who had

[1] The *Hipsang* was asserted by the Russians to have resisted visit. But the Court of Enquiry at Shanghai reported adversely to any such contention. In this case there was loss of life.

[2] Dipl. de la Mer. ii. 204.

[3] 3 C. Robins 295.

[4] Lansdowne to Hardinge, August 10th, 1904.

[5] *Journal de S. Pétersbourg*, September 30th (N.S.), 1904.

escaped from internment; but, commencing in January, 1905, the naval forces seized at least twenty-two colliers and provision boats going to Vladivostock: the British *Roseley*, *Lethington*, *Oakley*, *Bawtry*, *Wyefield* (provisions), *Scotsman* (provisions), *Apollo*, *Sylvania*, *Powderham*, *Easby Abbey*, *Venus*, *Aphrodite* (?), and *Harberton*, the Dutch *Wilhelmina*, the Austrian *Burma* and *Siam*, the German *Paros* (general), *Romulus*, and *Severno*, the Swedish *Vega*, the United States *Tacoma*, and the French *Quang-Nam*.

It is not known that proceedings have proceeded to confiscation in all these cases; however, the *Nigretia* has been "taken over" by the Osaka Shosen Kaisha, and the *Lethington* by the Mitsiu Bussan Kaisha; and the *Sylvania* was definitively confiscated at Sasebo last month; and, since then, the *Apollo* and *Tacoma*. It was stated on April 18th in the House of Commons that the *Oakley* and *Roseley* had also been confiscated.

The British Twenty-four Hours' Rule as to Belligerent Warships.—The genesis of the British rule requiring warships of a belligerent to depart in twenty-four hours is hard to trace. It seems to have grown out of the old rule requiring an interval of at least twenty-four hours to elapse between the sailing of enemies from a neutral port. Such a regulation is found in the Tuscan *règlement* of 1778, and in the contemporaneous edicts of Genoa (which treats the rule as an established and binding one) and Venice (which calls it the most general and uniform one—"*più generale è più recerrito uniformamente*." There was also a usage (*odio furum*) of excluding privateers, or of restricting their stay, when entering with prizes, to twenty-four hours. But the British rule of 1862 went a great deal further—excluding navy ships, and that even when they brought no prizes. Apparently Lord J. Russell took the step without thinking that he was making much of a change. In the House of Commons on June 3rd, 1861, he intimated, in answer to a question on the subject of privateering, that it had been decided to interdict both ships of war and privateers from coming into territorial waters *with prizes*.[1] He remarked that this course had been taken in concert with the French Government, and was "not very different" from the French practice, in force since 1681, of requiring privateers coming in with prizes to leave in twenty-four hours. But when the proclamation of January 31st, 1862, appeared, it prohibited both ships of war and privateers from staying more than twenty-four hours in territorial waters, *whether with prizes or not*. The real cause of this stringency was the pressing representations of Mr. Adams, who, on the erroneous assumption that privateers were not allowed to remain more than twenty-four hours in the ports of France and Europe generally,[2] was urgent that Britain should adopt a similar rule. It is impossible to say why the

[1] Hansard, 3rd ser. 163, p. 471.

[2] The fact was that the French prohibition was only directed to their entry *with prizes*.

decisive step was taken of extending it to commissioned ships of the navy. Other nations adopted no such course.

The Confederate *Sumter* put to sea on June 30th, 1861, and visited Cienfuegos (Spanish), Curaçoa (Dutch), Puerto Caballo (Venezuela), Trinidad, Paramaribo (Dutch), Maranham (Brazilian), Martinique, Cadiz, and Gibraltar. Coal and provisions were supplied at all but the Venezuelan and the two last ports. Her stay was seven days at Curaçoa, twelve at Paramaribo, nine at Maranham, fourteen at Martinique, and thirteen at Cadiz. She received about one hundred tons of coal in each case of supply—and at Martinique sufficient for the Atlantic voyage. Brazil and the Netherlands, as also France, maintained at length the propriety of their action, which was indeed principally objected to on the ground of the irregular character of the commissioning Power.[1]

Pressed to acknowledge themselves in the wrong by Mr. Pike, the United States Minister,[2] the Netherlands Government returned the following reply:[3] "According to the principles of the laws of nations, all nations without exception may admit vessels of war belonging to a belligerent State to their ports, and accord to them all the favours which constitute an asylum. Conditions are imposed on the said vessels during their stay in the ports or roadsteads. For example, they must keep perfect peace with all vessels that may be there; they may not augment their crews, nor the number of their guns, nor be on the look-out in the port or roadsteads for the purpose of watching after hostile vessels arriving or departing, etc. . . . If (p. 261) we had room to believe that the *Sumter* . . . sought to make of Curaçoa . . . the base of operations against the commerce of the adverse party, the Government of the Netherlands would be the first to perceive that such acts would be a real infraction, not merely of the neutrality we wish to observe, but also of the right of sovereignty over the territorial seas of the State—the duty of a neutral State being to take care that the vessels of the belligerent parties commit no act of hostility within the limits of its territory, and do not keep watch in the ports of its dominions to cruise from them after vessels of the adverse party."

This "spirited and elaborate" reply, as Prof. Bernard trerms it, elicited a tart rejoinder from the Secretary of State that the United States would make sure that such vessels should not be admitted into Netherlands ports. The threat remained *brutum fulmen*; and the Secretary had to be content with the fresh Dutch instructions, issued in October, limiting the stay of vessels to twice twenty-four hours, and the supply of coal to that needed for a twenty-four hours' run. This restriction, however, was removed[4] on

[1] *Geneva Arbitration*, Counter-case of Great Britain, p. 67.

[2] *Ibid.*, and see Appendix to British Case, vol. vi.

[3] Cited M. Bernard, *Brit. Neutrality*, p. 253; Baron v. Zuelen to Mr. Pike, September 17th, 1861.

[4] Streus to Pike, December 30th, 1861; App. to Brit. Case, v. 94, 96.

the accession of a new minister, on the alleged representations of the Governor of Curaçoa that it operated adversely to the Federal cruisers. Nor was it restored,[1] and all that remained to Mr. Seward was to console himself with the reflection that he was under no obligations to his friends. It was subsequently admitted[2] that the conduct of the Netherlands gave the United States "no serious cause of complaint."

Brazil insisted on her right to adopt the same course. "The Imperial Government of Brazil has ordered the presidents of the provinces . . . (3) That they shall admit the vessels of war of both belligerents, unless they shall be prizes (always with exception of stress)."

By Art. 6 of the treaty between U.S.A. and Colombia, it is provided that if the citizens of either party shall be forced to seek asylum with their vessels, whether merchant or of war, through pursuit of enemies, they shall be received and treated with humanity by the other, "giving to them all favour and protection for repairing their ships, procuring provisions and placing themselves in a situation to continue their voyage without obstacle or hindrance of any kind."

The vague assertions that some such rule of expelling warships and of interning them is of international obligation rests, therefore, on no substantial basis. A long period of maritime peace produces a crop of curious doctrine, unchecked by the logic of facts.

The United States themselves had allowed their privateer *General Armstrong* to lie in Portugal waters at Fayal and the *Essex* in Chilian waters at Valparaiso, without offering to disarm them; and in 1779 (October) Admiral Jones took two prizes into the Texel and stayed there two months with them. During the Danish war with Schleswig-Holstein in 1848, Lübeck enforced disarmament to the point of driving out a fugitive Schleswig vessel which refused to be "interned." Geffcken, the editor of Heffter, regards this as an uncalled-for strictness, and this opinion has been generally concurred in.[3] The Swedish and Danish Governments in 1854 announced that they would admit belligerents to their mercantile ports without reserve, and allow them to take in supplies (except such as are in the class of contraband).[4] Lord Clarendon was glad to express the satisfaction of H.B.M. Government with these measures, which they did not doubt would be strictly and honourably fulfilled.[5]

By the Danish instructions issued during the Crimean war to naval commanders, it was provided (Art. 7)[6]—"If a ship of war, . . . flying before an enemy takes refuge in Danish territory, it is your duty to take

[1] Sombreff to Pike, April 14th, 1862.

[2] Case of the U.S., p. 462.

[3] § 147: note 10.

[4] Correspondence relative to the Neutrality of Denmark and Sweden, Parl. Papers, 1854. State Papers, vol. xliv. 94.

[5] *Ibid.*

[6] Printed, Report of Royal Commission on Neutrality Laws, p. 44.

it under your protection"; and (Art. 8) "When foreign ships of war wish to run into harbours within the limits of your station, you will watch that the ship conforms to the rules of the harbour. . . ." (Art. 9): "Privateers' . . stay in harbour shall not be suffered longer than is absolutely necessary for their repairs. . . . You must, before you have recourse to force, carefully convince yourself that the vessel in question is really a privateer and not a man-of-war."

The Federal *Sonoma* and her consorts coaled to the extent of 240 tons at Bermuda, and the *Vanderbilt* had 2,000 tons in three months at St. Helena, the Cape, and Mauritius.[1]

Holland, in 1866,[2] on the occasion of the Austro-Prussian war, put forward a complete proclamation of neutrality. Art. IV. ran: "The ships of war of the belligerent parties, provided they submit to the international regulations for their admission into neutral ports, may remain for unlimited time in Dutch harbours and estuaries: they may also provide themselves with an unlimited quantity of coal. The Government, however, reserves to itself the right, whenever it is thought necessary for the preservation of neutrality, to limit the duration of such stay to twenty-four hours."

Loans.—No objection seems to be taken by either belligerent Power, or by the Governments concerned, to the numerous loans raised in Europe and America for the use of the belligerents. The novelist Björnsen has put forward the suggestion that the supply of money should be considered contraband traffic: he apparently did not advert to the fact that governments do not as a rule prohibit contraband traffic, and that, if they did, the furnishing of credit to a belligerent is quite beyond their power to treat on the same lines as the export of a material article. Nevertheless, the Common Pleas decided in 1824, on the question of a Greek war loan, that participation in it was unlawful for a resident in Britain.[3]

Commissioning Volunteer Cruisers on High Seas.—A question has been raised as to the possibility of commissioning Russian volunteer cruisers on the high seas. It is usually considered an infringement of sovereignty to commission a ship in another sovereign's port, though on somewhat unsubstantial grounds. But there is no reason why it should not be done on the ocean. Sir W. V. Harcourt, in his interesting memorandum on the Report of the Neutrality Laws Commission, says:—

"A strong feeling has recently grown up against the recognition of belligerent commissions granted to vessels on the high seas, by which such vessels become at once raised to the position of lawful belligerent cruisers. . . . It seems to me that for all reasons it is wise to discourage such a practice. As there is no rule of international law which forbids such delivering of commissions on the high seas, we cannot of course refuse to recognise

[1] British Counter-case at Geneva, *passim*.
[2] Treaty of Washington, vol. iii. p. 369 (March 17th).
[3] 9 Moo. C.P. 586.

the title of such a cruiser to all the legitimate rights of war in places beyond our jurisdiction. But we are masters of our own actions and our own hospitality within the realm. Though, therefore, we cannot dispute the validity of such a commission on the high seas, or the legality of capture made by such a vessel, we may refuse to admit to our own ports any vessel which has not received its commission in a port of its own country. By so doing we shall be acting strictly within the principle of the law of nations, and our example would . . . tend to repress the practice altogether."

And Prof. M. Bernard:—

"We have seen, undoubtedly, that a vessel may be built, equipped, armed, commissioned, and employed as a cruiser, without even having entered a port of the nation under whose flag she sails. Whether it is just and expedient for all nations that this should be prohibited, is an open question: at present it is not prohibited."[1]

[1] M. Bernard, *Brit. Neutrality*, p. 401.

THE CENTENARY OF THE FRENCH CIVIL CODE.[1]

[*Contributed by* Sir Courtenay Ilbert, K.C.S.I.]

The Celebration of the Centenary: Its Aim.—When I was asked to read a paper on "The Centenary of the French Civil Code," I felt much hesitation in complying with the request. The subject of codification is vast; it does not much interest the present generation of Englishmen: one is tempted to think that all that is worth saying about it has been said already. But I do not intend to enlarge upon the general aspect of the subject: what I think I may usefully do is to say a few words which may serve to explain the nature and objects of the celebration which was held at Paris during the final week of October last.

The celebration was initiated by two private societies—the *Société de Législation Comparée* and the *Société d'Études Législatives*, who have as their common President M. Baudouin, *Procureur-général* at the *Cour de Cassation*. They constituted an organising Committee for carrying out the work. The proceedings were not official, although they received the countenance and support of the President of the Republic, of the Minister of Justice, and of other great official persons. The object in view was twofold: first, to celebrate an event of great historical importance both in the history of France and in the history of law; and, secondly, to take some practical steps for considering what amendments the Civil Code required, and on what lines they should be effected. Thus the proceedings were partly public and ornamental, partly private and business-like. In the private proceedings I took no part, but I have since been supplied, by the kindness of the Committee, with a copy of the *Livre du Centenaire*,[2] which had been prepared under their direction and for the guidance of their deliberations. It consists of two substantial volumes, contains a series of studies, general and special, on the Code itself and on its operation and influence in other countries, and concludes with suggestions as to the

[1] A paper read before the British Academy, December, 1904, and reprinted by the kind permission of the Academy.

[2] Le Code Civil, *Livre du Centenaire*, publié par la Société d'Études Législatives. Paris, Arthur Rousseau, 1904.

lines on which revision might proceed. There is a general introduction by M. Albert Sorel: the first of the general studies is by M. Esmein, and many of the other contributions are by jurists of acknowledged eminence in Paris, in the other French Universities, and in foreign countries which have been influenced by the French Codes. It is a work of great and varied interest, and I regret that it did not reach my hands until after I had written this paper. And yet, perhaps, from one point of view, it is as well that it did not reach me earlier; for if I had been fully aware of the extent and wealth of materials available, I should probably have shrunk from a task for which I am so inadequately equipped.

The public proceedings consisted of a reception at the Hôtel de Ville and a solemn sitting in the great amphitheatre of the Sorbonne, where discourses were delivered, of a banquet at the Palais d'Orsay, and finally of an evening party given by the Minister of Justice, M. Vallé, at the Chancellerie in the Place Vendôme. M. Baudouin was unfortunately prevented from attending, but his place was efficiently taken by M. Lyon-Caen, the Vice-President. I have some reasons for suspecting that the dimensions which the celebration attained considerably exceeded the expectations of the organisers, and that the work of organisation imposed a very heavy strain on the organising Committee and its staff, and it may be that there were some consequential hitches in the arrangements. But speaking for myself and for the two English friends who with me attended the public celebrations, I can only say that we have every reason to be grateful for the kindness and hospitality which we received.

Nature and Origin of the Code.—What then is the Civil Code of France? It is the first of the five Codes which were passed for France in the course of the years 1804 to 1810, when Napoleon was either First Consul or Emperor. The other four are the *Code de Procédure Civile*, the *Code de Commerce*, the *Code d'Instruction Criminelle*, and the *Code Pénal*. Of the five Codes the *Code Civil* is the earliest in date, and perhaps the most important; it became law as a whole in March, 1804. It contains such of the rules of the private civil law as it was considered expedient and practicable to embody in a single Code. It consists of three books, preceded by a few preliminary articles on laws in general. Each book is divided into titles, each title into chapters, and each chapter into articles. The original number of articles was 2,281. The first book relates to persons; the second to goods, and the different modifications of property; the third to the different modes in which property is acquired. Some notion of the contents of each book may be gathered from the different titles.

The first title of the first book is headed "As to the enjoyment and privation of civil rights," and deals with various questions relating to nationality and naturalisation; the second relates to the *Actes de l'état civil*, that is to say, to the registration of births, marriages, and deaths; then

there are titles relating to domicile, absence, marriage, divorce, paternity and affiliation, adoption, *patria potestas*, minority, guardianship and emancipation, majority, interdiction and the judicial council.[1] The titles of the second book are headed (1) Distinction of goods, *i.e.* the distinction between movables and immovables; (2) Property, *i.e.* practically the rights of accession; (3) Usufruct, use and habitation; and (4) Servitudes. The third book embraces twenty titles, with the enumeration of which I will not weary you. They include succession, wills and gifts *inter vivos*, contracts, obligations such as quasi-contracts and delicts which arise without contract; contracts of marriage and the rights of husband and wife; sale, hiring, partnership, loan, mortgage, and prescription.

Such being the Civil Code, let me remind you briefly of the causes to which it owes its existence, and of the circumstances in which it came into being. The Civil Code of France, like the more recent Civil Code of Germany, owed its existence not to a mere desire for improving the form of the law, but to a sense of the intolerable practical inconveniences which arose from the co-existence of several different systems of law within the same political State, and of the need for replacing diversity by uniformity, wherever uniformity was possible. A sense of the pressing need for unity of law—that was the real origin of the Code; and that explains why proposals for codification have been received with comparative frigidity in this country.

Our Plantagenet kings, and their strong central courts, gave England many centuries ago that one body of general law for which France had to wait until the beginning, and Germany until the end, of the nineteenth century.

Consider the condition of French law in 1789. Instead of one Civil Code for the whole country there were at least 360 local codes of civil law, some applying to a whole province, some to a much smaller district.[2] The whole country was divided almost equally into two great legal regions—the region of the written law, based on the Roman law of Theodosius and Justinian, and the region of customary law. Each of these two systems of law was compatible with local diversities, but each of them had its common and distinctive features. The written law was more authoritative and individualist; the customary law was more humane and sociable. Both of them were supplemented, modified, or contradicted by three other general systems of law—the feudal law, which recognised two separate classes of land, with consequential distinctions of personal rights; the canon law, which exercised a preponderating influence on many parts of the law of persons, especially on the law of marriage; and the royal ordinances, which cut into the common law as statute law cuts into common law in this country. All these laws were modified by local

[1] *I.e.* the council appointed for the care of a prodigal.

[2] See Sagnac, *Législation Civile de la Révolution Française.*

usages, expounded by voluminous commentaries, and interpreted by conflicting and varying decisions of numerous courts.

The Movement for Unification of French Law.—This was the state of things with which the Revolution of 1789 was confronted. I speak of 1789 because, although the Codes are usually and justly associated with the name of Napoleon, they were in reality children of the Revolution, like himself. But here, as in other cases, the Revolution merely set loose, or gave an impulse to, forces which had long been at work. The unity of French law had been the dream of French kings from the time of Louis XI., if not from the time of Saint Louis. Two factors made for unity: in the south the principles of the Roman law tended to supersede local customs; in the north the custom of Paris tended to supplant other customs. Under Charles VIII. and Louis XII. vigorous and systematic efforts were made to digest the customary law, and by the end of the sixteenth century the customs of all the provinces had been reduced to a written and authoritative form. From the twelfth to the seventeenth centuries the French law was being frequently altered by royal ordinances; but these ordinances answered to our amending Acts, and whilst they might improve the substance of the law, they did not necessarily make it more simple or uniform. The ordinances of Louis XIV. and Louis XV., which were associated with the names of Colbert and D'Aguesseau, were of a different character. They were Codes. They were framed by learned commissions, presented in a complete and systematic form the whole of a particular branch of the law, and extended to the whole of the country. They were the immediate predecessors of the Napoleonic Codes, and to a great extent suggested their form and supplied their materials.

Throughout the eighteenth century almost all enlightened opinion in France—Montesquieu was an exception—was strongly in favour of unifying French law. Pothier was formulating and arranging its principles, and expressing them in terms capable of being transferred bodily into the Codes of the future. It has been said that three-fourths of the Civil Code of 1804 were extracted from his treatises. Everything pointed in the direction of the Codes, but until the Revolution the forces which made for privilege and diversity were still too strong to be overcome. Nor would the *cahiers* of 1789—the budgets of grievances which were laid before the National Assembly—disclose any strong or general demand for unity of law: they were more concerned with particular local and personal grievances. It was the wonderful night of August 4th, 1789, when the privileged classes joined in making a holocaust of their privileges, when the different classes and peoples that made up France were fused into a single mass—it was this night that opened the doors for and ushered in the new legislation. A year afterwards, on August 16th, 1790, the National Assembly decreed that "the civil laws shall be revised and reformed by the Legislature, and there shall be a general code of laws, simple, clear, and appropriate to the

constitution." And the constitution of September, 1791, repeated that "there shall be made a code of civil laws common to the whole kingdom."

But it was not enough to declare uniformity of law as a principle. There was a preliminary question, What law was to be adopted? How was the old system based on privilege and inequality to be reconciled with the new principles of liberty and equality? When there was a conflict between the principles of two rival systems, such as the written law and the customary law, which was to prevail? Amendment had to precede codification.

The work of amendment was carried out by a series of revolutionary laws, and the double process, that of amending and that of codifying the rules of the civil law, occupied a period of some fifteen years. This period may be divided into two lesser periods, one from 1789 to 1794, the other from 1794 to 1804. The first was a period of progress, not always enlightened; the second was a period of reaction, not always obscurantist. During the first period the principles which prevailed were those of liberty and equality; during the second period they were order and authority. During the first the influence of philosophers predominated, during the second the influence of lawyers.

Privilege and Equality.—Let me touch on the principal changes effected. Under the old régime the law of persons was based on privilege, inequality, disabilities. There were nobles, roturiers, and, in some places, serfs. The clergy had their immunities and their disabilities; the "religious" incurred civil death. The alien, the Protestant, and the Jew were subject to serious disabilities. A series of enactments swept away these differences and established broadly the principle of equality of civil rights. Marriage, under the old régime, belonged to the domain of the canon law, and was under the control of the clergy. The Revolution set up civil registers of births, marriages, and deaths, made marriage a civil contract, and recognised divorce. In family law it reduced the power of the father and raised the position of the wife. In the law of succession two rival principles were found in conflict with each other: the principle of individual liberty made for freedom of testation, the principle of equality made against it. The Roman law of the south favoured the former principle, the customs of the north the latter. Mirabeau, though a southerner, in the great speech which was read to the National Assembly the day after his death, declared for the principle of equality, and it prevailed. The laws of nature were recognised by placing illegitimate children, for purposes of succession, on a footing almost equal to that of legitimate children. Succession in accordance with primogeniture, and entails, were abolished. The enjoyment of the land had been fettered by a multiplicity of burdensome dues, superiorities, and servitudes. The men of August 4th proclaimed in general terms the emancipation of the land, and left their successors to work out the problem. It was worked out in very rough and ready fashion.

At first an attempt was made to distinguish between feudal dues, which were to be abolished, and contractual dues, which were to be redeemed. But the distinction was found to be untenable, and eventually most superior rights were swept away without compensation. When the State had entered into the inheritance of the *émigré* it endeavoured, for fiscal reasons, to restore some of these rights, but by this time the position of the occupier had become inexpugnable, and the attempt failed.

By all these radical changes the ground was effectively cleared for a Code of uniform civil laws. It was the National Convention that first took practical steps for the preparation of such a Code. In October, 1792, they appointed a Committee of legislation, consisting of forty-eight members, with Cambacérès as President. The Committee held evening sittings, which began at six or seven, and often lasted until eleven. They worked with enormous industry and with feverish rapidity, but their pace did not satisfy the Convention. On June 25th, 1793, a member of the Convention proposed and carried a resolution that the Committee of legislation should present a plan of a Civil Code within a month, and such a plan was actually expounded to the Convention by Cambacérès on the 9th of the following August. This, it will be remembered, was in the midst of the Terror. Cambacérès' Code followed the traditional plan of Justinian's *Institutes*, and was to be divided into four books, of which, however, the fourth, relating to procedure, was never drawn up. It consisted of 719 articles, and embodied, according to M. Viollet, a "clear methodical scheme." The Convention, in the midst of war, tumult, and proscription, peacefully discussed the laws of succession, alluvion, and natural children, from August 22nd to October 28th, but eventually laid aside the general scheme as too complex, though they passed parts of it into law. I take the subsequent stages from the valuable chapter which M. Viollet has contributed to the eighth volume of the Cambridge Modern History.

On September 9th, 1794 (23 Fructidor of the Year ii), the Committee presented a second scheme of 297 articles, a sort of summary, which only contained the principles involved and their immediate consequences. The Convention soon perceived that this was more the skeleton of a Code than the Code itself. The discussion of it was suspended. A third scheme was presented, not to the Convention, but to the Council of Five Hundred, by the so-called Commission for the classification of laws (June 14th, 1796—24 Prairial of the Year iv). This scheme, which according to Portalis was a masterpiece of method and exactness, was scarcely examined and remained almost entirely a dead letter. Jacqueminot presented a fourth scheme to the Legislative Commission of the Council of Five Hundred (30 Frimaire of the Year viii—December 21st, 1799). This project was not discussed. Finally an order from the Consuls (24 Thermidor of the Year viii—August 12th, 1800) commissioned Tronchet, Maleville, Bigot, Préameneu, and Portalis to draw up a fresh project for a Code. This fifth scheme developed into the Civil Code; an imperfect piece of work it certainly was, but wise, well weighed, and saturated with traditional elements.

Napoleon as Code Maker.—Napoleon, as is well known, felt a keen interest in the Civil Code. He presided over 57 out of the 102 sittings of the Council of State at which the draft Code was discussed.[1] He took an active and effective share in the discussions of the draft, and, above all, supplied the driving force without which it would probably not have become law. He is reported to have said at St. Helena that his glory did not consist in his having won forty battles, but in the Civil Code and in the deliberations of the Council of State. A brilliant description of the part which he played in the formation of the Code will be found in a chapter which Mr. Herbert Fisher has written for a forthcoming volume of the Cambridge History, and which I have been permitted to see. Napoleon's sympathies were on the whole, and especially in the domain of family law, with the reaction which had set in since 1794 against the principles of 1789. He thought that the Revolution had unduly disturbed the foundations of family life. He held that the legislator, far from encouraging the indefinite subdivision of property, should aim at securing a nation of moderate fortunes. He was a keen advocate of the subjection of women. He thought that it was the function of law to chasten loose morals, to exhibit the solemnity and sanctity of marriage, to strengthen the authority of the father, and to maintain the cohesion of the family group. These views, which were shared by many others, find their reflection in the Code, which, on many points, partially retraces the steps that had been taken since 1789. Civil death was restored. A retrograde step was taken by basing the civil rights of aliens on the principle of reciprocity instead of on the principle of equality. The power of the father was restored, the civil status of women was depressed. The grounds of divorce were diminished in number, but divorce by mutual consent was, mainly through Napoleon's influence, allowed. Illegitimate children were less favourably treated. Testamentary powers were somewhat enlarged. The main lines of the revolutionary law of succession and of property had been too firmly established, and were too consonant with the wishes of the people at large, to be set aside. But on many points the Code is a compromise, and not always a logical compromise. In the conflict between the written law of the south and the customary law of the north, the customary law, which had enjoyed the advantage of being expounded by Pothier, prevailed on the whole, but the southern lawyers were propitiated by an express recognition of the *régime dotal* in marriage, as an alternative to the *régime communal.*

What has been the verdict of history on the Civil Code? Perhaps our opinion will not differ much from Mr. Fisher's summary.

[1] This is the ordinary statement, and it has been recently repeated by M. Sorel in his introduction to the *Livre du Centenaire* (p. xxv). But Mr. Herbert Fisher, who has examined the *Procès-verbaux*, is unable to account for more than 87 sittings, at 35 of which Napoleon attended.

The Civil Code was a hasty piece of work; and the First Consul imported a strong gust of passion and politics into the laboratory of legal science. Civil death—a superannuated, unjust, and immoral fiction—confiscation, and the position of women, are bad blots upon the page. . . . There is also much disproportion and omission. There are instances of a subject being discussed in the Council, then forgotten and allowed to lapse. The law of contract is lifted almost bodily from Domat and Pothier. But, when all deductions have been made for haste, negligence, and political perversion, it remains a great achievement. It was a single Code for the whole of France, substantially based upon the broad historic instincts of the race, while preserving the most valuable social conquests of the Revolution.

Two things at any rate the Code has done. It has familiarised all Frenchmen with the principles of the law which they have to observe. It has supplied a model which other nations have eagerly and extensively copied.

Popularising the Law.—In England the law is ordinarily regarded as something technical, mysterious, not to be understanded of the lay folk. In France the leading provisions of the Codes have become household words. They form the topic of village conversations. Familiarity with them is presupposed in popular literature and on the stage. Balzac, though a legitimist, was saturated with the Codes. There are few better commentaries on the French marriage law than his *Contrat de Mariage*, on the French bankruptcy law than his *César Birotteau*. You may hear an article of the French Penal Code referred to by its number on the stage, and the reference at once caught up by the audience. A stage reference to 24 & 25 Vict., c. 96, s. 75, would not meet with much response from an English gallery.

To the contagious effect of the French Codes on neighbouring countries a whole series of studies has been devoted in the Centenary volumes to which I have referred, and I will not elaborate the topic here.

Codification and the Growth of Law.—The traditional opinion of English judges and lawyers has always been unfavourable to Codes. They believe that Codes tend to cramp and impede the free and natural growth of law. I have already explained why the most powerful motive for codification has been absent in this country. As to the need for and utility of Codes in other parts of the world it would at least be prudent to suspend our judgment. I do not propose to argue the general question. I will content myself with making one remark of general application, and noting one or two facts which have a special bearing on the French Codes.

As long as a nation continues to live and grow, nothing can stop the growth of its law. The rules of law are simply those rules of conduct which are enforced by the State, and they have to be applied with reference to the political, social, and economic conditions of the time. Absence of power to legislate, or failure to exercise it, may impede, cramp, or distort the growth, but cannot destroy it. The stream will either burst through,

or, more often, find its way by tortuous and unexpected channels. The human mind displays marvellous ingenuity in adapting old forms to new conditions, whether those forms are embodied in codes or in creeds. The principle of development has been applied, not only to theological formularies, but to documents like the constitution of the United States, and, under the pressure of inexorable necessity, is somehow applied in apparent defiance of the rules of logic and of language.

Moreover, are we not apt, in this country, to exaggerate both the flexibility of the common law and the rigidity of Codes? Are we not all familiar with cases in which the highest Courts of the realm, bound as they are by precedents, have reflected the views rather of a past generation than of the present, and have found themselves unable to assert for themselves or to recognise in others those principles of liberty and development which are essential to organic life and growth?

Then—in what sense and to what extent, have the French Codes arrested the development of French law? I think that they have to some extent, but more in the domain of procedure than of substantive law, more in the sphere of commercial law, where the *Code de Commerce* followed too closely antiquated models, than in the sphere of general civil law, and, in the whole field of law, to a much less extent than is generally supposed in this country. French lawyers recognise three modes by which law is developed, legislation, *jurisprudence*, or case-law, and *doctrine*, that is to say, the teachings and writings of learned lawyers.

Modern Developments of the Code.—I doubt whether we have realised—certainly I myself had not realised until recently—the extent to which the Civil Code has been altered by legislation, especially within the last twenty years. I hold in my hand a little pocket edition of the Civil Code, published in the present year, and showing in a convenient form the existing text of the law and the original articles of the Code. The existing text is printed in ordinary type, the original articles are in italics. I take the first chapter of the first title of the first book. It relates to the enjoyment of civil rights and consists of ten articles. Of these only three remain, the other seven have been repealed and replaced by others. Of the original seventeen articles in the second chapter not one remains, all have gone, including the articles which recognise civil death. The provisions relating to registration of births, marriages, and deaths have been materially amended. Many of the obnoxious articles relating to the position of women still remain, and their survival explains the hostile demonstrations against the Civil Code which were made the other day at the Sorbonne and in the Rue de Rivoli. But wives and husbands have been put on a footing of equality as regards divorce for adultery, and the whole law of divorce has been completely recast by the laws of 1884 and 1886. It may be remembered that divorce was recognised in 1804, abolished in 1816, and restored in 1884, but under different conditions. The power of the father over neglected or ill-used children has

been restricted by, and may be taken away under, a law of 1889, which enables the State to intervene in the case of such children.

The law of succession has also been materially altered. The disabilities of aliens in the matter of succession were removed as long ago as 1819. By a law of 1891 the surviving husband or wife was given a share or interest in the inheritance notwithstanding the existence of children. The rules as to the succession rights of illegitimate children were completely remodelled in 1896. The technical rules which require children claiming a share of the inheritance to account for advances made by the parent during his lifetime were amended in 1898. Succession duties on inheritance are now regulated by the fiscal laws of 1901, 1902, and 1903. The law as to wills made by soldiers and on board ship was amended in 1893 and 1900. In the chapters relating to property law the rules with respect to party walls, boundary fences, and ways of necessity were altered in 1881, and those as to alluvion and water rights in 1898.

The important chapters of the Code which relate to delicts and quasi-delicts have been supplemented and materially altered by the laws of 1898, 1899, and 1902 for regulating the responsibility of employers in the case of accidents to their workmen. The rules as to the contract of service in the case of domestic servants and workmen had been previously expanded and made more precise by a law of 1890.

The famous association law of 1901 with its supplementary decrees, though best known in its bearing on religious congregations, is of much wider application, and in the last edition of the Civil Code finds its place as part of, or a supplement to, the title relating to the *contrat de société*. The law as to aleatory contracts was supplemented by a law of 1900 as to gambling on the Stock Exchange. And, finally, I may note that imprisonment for debt was abolished in 1867.

I have not of course attempted an exhaustive statement of the changes made in the Civil Code since the date of its enactment,[1] but I am sure that I have said enough to show that it has never been treated by the French legislature as a sacrosanct or verbally inspired document.

Bentham's Ideal.—Bentham looked forward to a time when case law, or, as he preferred to call it, judge-made law, would be superseded by Codes. "Whatever is not in the Code of laws," he said, "ought not to be law." "The great utility of a Code of laws is to cause the debates of lawyers and the bad laws of former times to be forgotten." The Codes having been prepared, the introduction of all judge-made law should be forbidden. Judges should not make new law. Commentaries, if written, should not be used. In short the Code was to be complete and self-sufficing, and was not to be developed, supplemented, or modified except by legislative enactments.

[1] A full list of amendments to the *Code Civil* is given in a note to M. Larnaude's paper in the *Livre du Centenaire*, vol. ii. p. 909.

If these views could be accepted the French Civil Code must be pronounced to be a failure. It has not, fortunately for us, stopped or made unnecessary historical inquiries into French law as it stood before 1804. It has not checked the production, or prevented the citation, of commentaries. That it has not arrested the development of *jurisprudence*, the numerous and portly volumes of Dalloz can testify. Expressions not unlike those of Bentham may be found in the reports presented by Cambacérès on his earliest projects of codification. But these were the views, or at least the expressions, of the Cambacérès of the Convention, not of Cambacérès the Consul, and there is no reason to suppose that the framers of the Code of 1804 shared the illusions of 1793. On the contrary, it would be easy to quote from the preliminary report of the Commission of the Year viii. passages which lay stress on the inevitable imperfections of a Code, and recognise fully the necessity for the completing and supplementary action of judges.

Bentham's views on these points have long since been abandoned. We are all now agreed that a good Code must often—perhaps should always—content itself with the statement of general principles, that however complete and full it may be it can never supply rules applicable by an ordinary intellect to every possible case, that the work of interpreting the law and of applying its general rules to particular cases must be left to the judges, that the sound interpretation of legal definitions and legal rules requires a knowledge of legal history, and that the exercise of the power of interpretation and application necessarily involves—whatever the Benthamic Art. 5 of the Civil Code may say to the contrary—the formulation of subordinate and supplemental rules. What the Code has really done for French *jurisprudence* has been to simplify and facilitate the work of the judges by substituting for numerous and conflicting laws and usages a harmonious, orderly, and authoritative set of leading rules.

Codification and Legal Doctrine in France.—Nor is there any solid ground for believing that the codification of French law has been detrimental in France to legal literature or *doctrine*. We are indeed told by some French writers of authority that there was a time when the teaching in the French law schools, and the legal literature which arose out of and gathered round these schools, threatened to degenerate into arid and barren commentaries on the text of the Civil Code, unilluminated by any intelligent study of legal history or by a scientific appreciation of legal principles, and when a gradually widening breach arose between the law as taught in the schools and the law as developed in actual practice by judicial decisions. Had these tendencies continued they would have supplied the ground for a formidable indictment against codification. But if the same authorities are to be trusted, these tendencies have not continued. I am not in a position to speak from personal knowledge of the character of the teaching now given in French schools of law. It may well be that a good deal of it, as of the teaching

in other schools, is lifeless and mechanical. But there seems strong evidence to show that during recent years much has been done in the French universities to improve the teaching and study of law, and that the tendency during the last quarter of a century has been to stop the threatened divorce between theory and practice, by insisting on study of the texts being accompanied, illustrated, and vitalised by study of judicial decisions, and at the same time to widen and deepen the theoretical study of law by dwelling on its historical and comparative aspects. The influence of M. Esmein, to mention only one well-known name, has been exercised strongly in this direction. Certainly the legal literature of France has no reason to fear comparison with the legal literature of countries which are blessed, or otherwise, with immunity from Codes. Take, for instance, the department of legal history. We are indebted to Sir Frederick Pollock and Prof. Maitland for a fragment—a most brilliant fragment, it is true, but merely a fragment—of the history of English law. But we have not as yet any comprehensive history of English law as a whole, we have nothing that could be compared with the works of M. Viollet and M. Esmein on the history of French law. The French Society of Comparative Legislation, which was founded in 1869, and which is largely responsible for the celebration of the recent centenary, has done and is doing excellent work in familiarising French lawyers with the legislation of other countries. And the historical and scientific study of law is by no means confined to Paris. If I needed any illustration of the extent to which it has been carried and the success with which it has been pursued in other parts of France, I might refer to the admirable essay on the origin and development of the testamentary executor which was recently published by M. Caillemer of the University of Lyons, and to the interesting contributions which have been made to the new *Livre du Centenaire* by representatives of local universities.

To the advanced and scientific student of law the *Code Civil* has supplied a framework to be filled in, supplemented, and illustrated. And to the ordinary student of law it is an inestimable boon that he should be able to find, within reasonable compass, an orderly and authoritative statement of the leading rules of his craft. The other day a young French lawyer wrote to me from a French provincial town, applying to me, as a brother member of the *Société de Législation Comparative*, for information about a point of English legal procedure, and he wound up by asking me, with much simplicity, whether I could refer him to any concise and complete work on English civil law. I was unable to comply with this request, and was obliged to say that there was nothing in England that corresponded to the French Civil Code. Was this answer quite satisfactory? But could any much more satisfactory answer have been given?

Progress and Future of Codification.—However that may be, there can be no doubt that the current English views about codification are very insular, and are not shared by any of the great continental States. Among

the countries which have either adopted the French Civil Code, or taken it as a model, are Belgium, Holland, Italy, Spain, and Portugal, besides Mexico and Chili, on the other side of the Atlantic, and Japan in the Far East.[1] Germany, working on independent lines, produced a Civil Code in 1896, after a period of gestation of twenty years, and brought it into operation in 1900. Switzerland passed an admirable law of obligations in 1883, and is engaged in the codification of other branches of its law.[2]

Within the British dominions British India has, as we all know, taken the lead in codification, moved thereto in the first instance by pressing practical needs, such as the impossibility of administering the Mahommedan criminal law, and the need of authoritative manuals for the use of untrained judges and magistrates. The draft codes of criminal law and criminal procedure prepared for English use by Sir James Stephen, and based on the Indian models, were in many respects rough and imperfect, but they were a great piece of work, and the failure of the Criminal Procedure Code to become law in 1882, a failure due largely to disregard of parliamentary tactics, has materially retarded the prospects of English codification on any extensive scale. In the meantime we are indebted to Sir Frederick Pollock and Mr. Chalmers respectively for three minor but extremely useful measures of codification within the domain of civil law, the Partnership Act of 1890, the Bills of Exchange Act of 1882, and the Sale of Goods Act of 1893. Mr. Chalmers's third codifying bill, which deals with marine insurance, has for many years been tossing about among the breakers of the House of Commons, and up to this time has always been left as a derelict at the end of each session. It will become law as soon as the mercantile community have shown unmistakably that they really want it, and are determined to have it, but not before.

Several of the self-governing Colonies have been more successful than the home legislature in their attempts at comprehensive codification. For instance the Dominion of Canada has a Criminal Code of 1882, based mainly on Sir James Stephen's drafts, and Queensland is indebted to Sir Samuel Griffiths for an excellent Criminal Code, which is framed on more independent lines, and which became law at the beginning of 1900.

If the British Government ever resumes any comprehensive schemes of codification, it will probably do so under the pressure of Imperial needs, not for the self-governing Colonies, which can take care of themselves, but for the less advanced parts of the British dominions, and for British protectorates where English law is administered. For these regions there is really great need of a simple and authoritative statement of the leading

[1] For a long list of Civil Codes enacted since 1804 see the *Livre du Centenaire*, vol. ii. p. 927; and for the progress of codification within and without the British dominions see chapters viii. and ix. of my *Legislative Methods and Forms*.

[2] See the *Message* (of May 28th, 1904) *du Conseil Fédéral à l'Assemblée Fédérale, concernant le Projet de Code Civil Suisse.*

rules of English civil and criminal law, such as can be understood and administered by officials with imperfect, or without any, professional training. Sketchy and fragmentary attempts at such statements are to be found in some of the Orders in Council which have been drawn up for regulating the exercise of British jurisdiction in protectorates. Many years ago the late Mr. Justice Wright, in whom we have recently lost one of the most acute and subtle intellects that ever adorned the English bench, prepared, at the instance of the Colonial Office, a Criminal Code for Jamaica, which did not become law in that Colony, but which has been applied, with modifications, to some of the other Crown Colonies. What would seem to be most useful would be the preparation of model civil and criminal Codes, not having any independent force of law, but capable of adaptation and application to the regions for which they are required. It is understood that the Colonial Office has been at various times contemplating the execution of such a task, but what progress, if any, has been made with it, I do not know.

I fear that I am being tempted away into a vast and almost boundless field of speculation, and I must return in my very few concluding words to the immediate subject of my paper. In 1815 France lost what she had conquered by the sword; she retained what she had conquered by ideas. She retained for herself her civil and other Codes, embodying, as they did, the most valuable and permanent results of the revolutionary legislation. Though her political frontier receded behind the Rhine, her Codes retained possession of the Rhenish provinces,[1] of Luxemburg, of Holland and Belgium, and of parts of Italy. She supplied models of legislation which were eagerly copied by her continental neighbours, and a conception of legal unity which was destined to be realised before the lapse of a century by the most formidable of her continental rivals. The Civil Code of 1804 both symbolised and expressed the legal and moral unity of a great nation. It was the realisation of a great idea, and on that ground it has been fitly and deservedly commemorated by the centenary that was celebrated in October last.

[1] In the Rhenish provinces the Napoleonic Code has now been superseded by the new German Civil Code. A new Civil Code was enacted for Holland in 1838.

THE LAW OF PARTITION IN CEYLON.[1]

[*Contributed by* W. R. Bisschop, Esq. LL.D.]

Co-ownership.—"Nemo invicem in communione manere debet." This maxim formed in the Civil Law the basis of a mode of acquisition of property.

If the co-owners of property could not come to a mutual understanding as to its division, partition could be enforced by any one of them against all the others, and the adjudication of the judge was considered as forming for each person the proprietary title to such part as had been allotted to him. The judgment formed a similar proprietary title in the case of a division of an inheritance and in an action for the regulation of the boundaries of neighbouring lands.

The mode of procedure was clearly set out, and by the practice of centuries the rules as to these actions, which must have been of common occurrence in a rural community, had been well established. The actions were *duplices*—that is to say, the parties might be called upon to act both as plaintiffs and defendants; they were *mixtæ* as being both *in rem* and *in personam*; and they were *bonæ fidei*.

In the Low Countries, various systems of community of property and of the common use of property were known, of which there are several surviving in the Netherlands at the present day. Grotius mentions in his *Introduction* (Bk. III. chap. xxviii. par. 5) some of the customs of Rhineland regarding the common use of property; and these are more fully set out in Van Leeuwen's *Roman-Dutch Law* (Bk. IV. chap. xxxix. par. 2). In the Ordinances of the various towns and communities local regulations can be found in abundance regarding the use of lands held in common.

With all these varieties certain rights were inherent to every community of property. Each owner had a right to possess his undivided share and to claim it from third parties. Each owner had the right to alienate his undivided share and to encumber it, and each owner could compel his fellow owners to co-operate in dividing the common property (*actio communi dividundo*).

[1] *The Law of Partition in Ceylon*, by A. St. V. Jayewardene. Galle, 1904, large 8vo (pp. xiii. and 108).

The procedure in an action for a partition of property held in common was similar in all the provinces. The Courts, who were accustomed to follow the Roman law on all points where the Common Law remained silent or the variety of customs made a guide necessary, adapted the clear and precise rules of the Civil Law to the *actio communi dividundo* of the Dutch provinces.

Thus custom was grafted on custom with a precision and determination which left no obscurities in the procedure followed by generation after generation during centuries of legal and historical development. In fact, the Dutch still adhere to this part of their Common Law, and the present rules of the Civil Code of the Netherlands regarding partition of property held in common are mainly the same as those laid down in the days of the Republic.

Notwithstanding the view of Mr. Justice Thomson, that the Roman-Dutch law as administered in Ceylon approaches more nearly to the Civil Law than it did when administered in Holland, and nothwithstanding the Ceylon Proclamation of 1799, which declared that the Roman-Dutch law should be the Common Law of Ceylon, this particular part of matured Civil Law has curiously enough received very little recognition in the Ceylon Law Courts, and has been superseded by two "ill-drawn" Ordinances which Mr. Jayewardene in his *Law of Partition in Ceylon* calls "pieces of patchwork," of which he gives the history and elucidates the ambiguity and inefficiency.

The Common Law of Ceylon.—Did the legislators and creators of these Ordinances know Chapter X. of Voet's Commentaries on the Pandects, either in its Latin form or in its English translation by Victor Sampson, or his *De familia erciscunda liber singularis*? If they did, would not it have been simpler—if codification were considered necessary—to have followed the recognised Common Law of Ceylon and to have codified that Common Law according to the exposition given by Voet rather than to legislate on lines of their own and to oblige the Courts to look to Voet for a solution of the difficulties which the Ordinances created or left unsolved?

Mr. Jayewardene on p. v. of his Introduction tells us that Voet's Commentaries were, at the time when the first Ordinance was passed, a sealed book to the majority of the judiciary and the profession, and that, in fact, the procedure followed in the Ordinances was derived from a decision given by the Supreme Court of Ceylon in *Abesekera* v. *Silva*, in which the procedure followed in a former case was pronounced a precedent to be adhered to "until a specific form of process (shall be) laid down by a rule or order of the Supreme Court"—a deplorable example of resting satisfied with common pottery in ignorance of the Delft china which is in one's possession!

The partition of estates left by deceased persons has been regulated in Ceylon according to English law, and thus the sister action for the partition

of property held in common from other sources than through inheritance—the so-called *actio familiæ erciscundæ*—came to naught, if it had ever been used in the Ceylon Law Courts. On the other hand, the rules of Roman-Dutch law regarding succession remained in existence and are still observed. The principle of succession by inheritance according to Roman-Dutch law, however, is the presumption of the continuance of the deceased's personality as owner of the estate by his successor without any interruption. The introduction of the English Act 3 & 4 William IV., c. 42, destroys this presumption, and substitutes for it the maxim that, at the death of a person, his goods shall be considered *bona vacantia*, of which the seisin shall be given by the Court to the administrator or the executor in order that he shall pass it on to those who, according to the rules of Roman-Dutch law—*i.e.* the Common Law of Ceylon—are entitled to the inheritance. Together with the presumption goes the *hereditatis petitio*. Nevertheless there remain the adiation and rejection of the inheritance. The heir, however, shall not be personally liable for the debts of the deceased over and above what he received from the estate in case of adiation of such inheritance!

One would have expected that, in practice, with the introduction of the English legal conceptions of the administration of estates, such administration would have superseded partition suits, as no administrator should rest satisfied until he had administered the estate—that is to say, divided the goods or their proceeds after payment of the debts (*e.g.* in case of the death of a parent) between all the children who succeed to the inheritance in equal shares.

Once more, this expectation appears to be erroneous. "Persons become entitled to property in infinitesimal fractions, and in addition to the soil itself, there are what are known as planter's shares of the first, second, third, or fourth plantations which have owners of their own, and which in their turn are divided and sub-divided into as many infinitesimal shares as the soil itself" (p. v. of the Introduction). The administrator simply passes on to those who are legally entitled the undivided shares of the common property, to be held in common!

"**Actio Communi Dividundo.**"—While in civil and Roman-Dutch law the *actio familiæ erciscundæ* is the more usual action for the partition of property held in common, and the *actio communi dividundo* follows the rules in which the former gives the lead, in Ceylon this too is reversed, and the substitute for the *actio familiæ erciscundæ* allows the *actio communi dividundo* to take its place in a double sense, first by leaving the original estate an undivided estate, and secondly by making the partition action one of common occurrence and of paramount importance.

No wonder that Mr. Jayewardene in his pamphlet on the Roman-Dutch law (Colombo, 1901) complains of the inconsistency of legal rules, maxims, and decisions in Ceylon!

How is the legislator to show a clear course, if he be guided by judicial

decisions which succeed each other like the black and white squares on a chess-board?

History of the Law.—But the legislator himself seems to blame.

Following up the general description of the tattered condition of Roman-Dutch law in Ceylon which Mr. Jayewardene gave in his pamphlet of 1901, he now takes to task the draftsmen of the Partition Ordinances No. 21 of 1844 and No. 10 of 1863.

In his Introduction the author gives the history of the Law of Partition from the date when Ceylon became British territory down to the present time. From 1799 until 1844 the matter was subject to the Common Law, which—as the Common Law was not at all or only partially understood—did not give much satisfaction to the Courts. In answer to the frequent complaints of the unsettled state of the law, the legislature passed on December 23rd, 1844, Ordinance No. 21 of that year, which dealt with wills, the division of an inheritance and the partition of landed property held in common. The many defects of this Ordinance—which are set out in full on pp. vii. and viii. of the Introduction—led to its repeal in 1852. Then the Common Law came into force again, but the procedure laid down by the repealed Ordinance was observed by the Courts after its abolition, until in 1863 the present Ordinance (No. 10 of that year) was passed. Though remedying the defects of its predecessor, it remained "a piece of patch-work, ill-drawn, and wanting in uniformity of language." With the help of a great number of judicial decisions whereby "most of the difficult points have now been finally settled," the Ordinance "fulfils with tolerable satisfaction the object for which it was intended."

The partition of movable property has not been specially regulated in Ceylon, nor the division of the use and possession of property (so-called "tatu-maru" possession). In Roman-Dutch law the *actio communi dividundo* applied to both—*mutatis mutandis*—but in Ceylon the rare occurrence of the former and the ignorance of the existence of a law which allows the possessors in common to divide their use of the common property without having recourse to a sale seem to make it even doubtful in the latter case what procedure should be followed in order to obtain the desired effect. Mr. Jayewardene is of opinion that the ordinary rules of the Code of Civil Procedure apply, and closes his Introduction with the sad, though astonishing, dictum: "If owners of land are only aware of the existence of a law which enables them to secure legal sanction for a mode of use and enjoyment of property which has lasted from time immemorial, they will not hesitate to avail themselves of it, rather than see their holdings, probably their sole mainstay and support, sold away."

Then follows the text of Ordinance No. 10 of 1863 (An Ordinance to provide for the Partition or Sale of Lands held in Common).

Text and Commentary.—In a lucid, precise, and careful criticism the author follows the articles of the Ordinances at present in force and gives

in copious notes the leading cases on the different points raised by the ambiguous language of the text. There are a great number. The author is not satisfied, however, to point out the failures of the legislator, but gives as to every article its history, the general state of the law, and the legal decisions thereon. Such treatment is bound to make the book very useful to practitioners and to those who have daily to cope with the subjects of which this volume treats. To persons who are not acquainted with the text, a survey of the different articles, one by one, is rather tiring. The law is not scientifically set out, and to find one's way through a hundred pages of close print is a task in itself. It is true that the author wrote for practitioners; and as a storehouse of learning and a work of reference the book is exceedingly valuable and most suitable for use in the course of one's practice. The clear way in which the subjects are dealt with individually in the different articles shows what science may expect from Mr. Jayewardene, and if this work goes through a second edition, it would be an advantage could the author see his way to give the precise state of the law in his own words, and to relegate to footnotes the reference to the sections of the Ordinance and the Code and the authors whom he quotes.

The Ordinance of 1863 is followed by the text of Ordinance No. 10 of 1897 exempting pleadings and other documents in partition suits from stamp duty, with the author's commentaries thereon paragraph by paragraph. In two appendices are given the text of ss. 7-18 of the Ordinance No. 21 of 1844 (An Ordinance to make Better Provision for the disposal of Landed Property) and of ss. 4 and 5 of the English Partition Act, 1868 (31 & 32 Vict., c. 40).

Mr. Jayewardene's book is a work of careful compilation and critical research. It should be welcomed by the profession for its lucid exposition of the existing law and the decisions thereon. It should be a guide to the legislator whenever he undertakes to pull down the patched-up modern building and to rebuild the structure on classical lines.

IMPERIAL ORGANISATION[1]

[*Contributed by* Sir Frederick Pollock, Bart.]

Origin of the Movement.—It seems fitting to explain why I think this paper deserves the serious attention of the Royal Colonial Institute, as I probably should not think if it stood for my own work alone. For the form and expression I am answerable, but the matter is the outcome of more than three years' consideration, and of active discussion extending over about a year and a half, in which about fifty persons holding almost every kind of opinion in politics, and representing many different professions and interests, have taken active part. Among them are several distinguished present or recent public servants, well acquainted with the conduct of public affairs, parliamentary, departmental, and executive, and it is not too much to say that their collective experience omits but few parts of the British Empire. Whatever else the suggestions I am to lay before you may be, they are no crude project of doctrinaires or amateurs. But I must ask a certain amount of confidence for this assertion. The very same reasons which make for the collective efficiency of the fellow-workers who have honoured me by choosing me as their spokesman inevitably prevent any public disclosure of their names. I need not remind this audience of the rules of the public service, or of analogous duties of discretion imposed in various degrees on active politicans. If it be asked, Why not give the names of those who are not restrained? the answer is that a list thus cut short would be so defective as to be positively misleading. One or two exceptions only can be made in the case of men who have severally and in public made valuable contributions to the problem. Mr. Haldane, Mr. W. Pember Reeves, and Dr. Parkin are all known to you; they will go some way, I think, towards vouching for the others who cannot be made known; at all events, the mention of them will show that we have not omitted either to look beyond the four seas or to profit by the best learning and statesmanship at home.

Our proceedings began with talk among certain members of a rather small but lately reinforced body called the Imperial Federation (Defence) Committee. We were anxious to see the work of the old Imperial Federation

[1] A paper read before the Royal Colonial Institute on April 11th, 1905, and reprinted, by kind permission of the Institute, from its Proceedings.

League resumed on more practical lines; we did not see how it could be taken over by the Committee in question, or by the British Empire League, or by this Institute, none of which bodies could be expected, even if they had power, to commit themselves to any constructive plan. For a while we considered the usual expedient of making a new club or association. But when we tried to formulate principles it was borne in upon us, gradually and firmly, that general formulas were just what we could not, at that stage, agree upon, and did not want; that we should do better without rules or even a name; and that the only prospect of useful results was in perfectly free and confidential discussion among persons not too many for that purpose. We did not start with any sanguine expectations, and should not have been much surprised, though we should have been a little disappointed, if we had failed to arrive at any conclusion. But the tossing of our thoughts at a few meetings, if I may use a good phrase of Bacon's, disclosed a tendency to crystallise on definite lines; and last October, after about a year's work of this kind, we were able to put forward a first collective statement.[1] In February I communicated to the Press a further statement in the nature of a report of progress.[2] This was done on my own responsibility, as otherwise a very large number of persons must have been consulted; but I believe it fairly represented, as it purported to do, the results and tendencies of discussion since October. In addition to oral exchange of views at our meetings, many of us have contributed written memoranda and letters, and we are in active correspondence with leading men in almost every part of Greater Britain. Information and criticism are still invited from all persons interested in the welfare of the Empire; and, if we cannot send a detailed answer in every case, we undertake that every communication shall receive attention. It is proposed to carry on our work until the meeting of the next Colonial Conference at all events.

I now come to the substance of our proposals, premising that, as we have mainly to do with the self-governing Colonies, I shall, as a rule, omit that adjective, taking it as understood. Of late I have observed a disposition in some quarters to regard the word "colony" as implying some kind of disparagement. Any one who is so disposed may do well to remember that the colonies of ancient Greek cities enjoyed absolute political independence. At the same time it is well not to forget that those colonies, united with their mother cities in kindred, in culture, and in religion, but wanting any means of effective co-operation, were subjugated in detail by centralised military powers, first in Asia Minor by the Persian king, and later in Southern Italy and Sicily by the Roman Republic.

The British Empire as a Unity in the Law of Nations.—There is a preliminary question, I confess, which we have not spent much time in discussing. We started from the assumption that the present relations between the component States of the British Empire are not all that can be

[1] *Times*, October 17, 1904. [2] *Ibid.* February 9, 1905.

desired, and that some better organised system is desirable if practicable. We believed, and still believe, that this is not only the better opinion, but is in fact held by a large majority of those who have considered the matter. There are even some who would censure us, if at all, for not making our proposals much more ambitious. But there does exist a contrary school, both at home and in the Colonies, holding it the best or the least objectionable course to do nothing. It may therefore not be superfluous to ask your attention for a few moments to the map of the world, and to the unique international and strategic situation of the land "thereon coloured red," as we say in conveyances. Before the law of nations these lands are all one. If a Swiss or Argentine citizen has a real or supposed grievance in New Zealand or in British Columbia for which he cannot get redress in the ordinary course of law, his Government makes diplomatic representations not at Wellington or Ottawa, but at the Foreign Office in London. There have been times when an indiscreet act of some petty Newfoundland officer might have committed these kingdoms and the whole empire to war with France. Conversely, claims of a British subject in any part of the world against a foreign Power can be urged only by the Home Government. It is possible, no doubt, to put subtle questions arising out of the relations of Great Britain as a paramount Power to protected States and their subjects in India and elsewhere; but such cases are outside our present scope, and are in fact not heard of, so that the general statement now made may for practical purposes be taken as unqualified. As the very latest writer on international law has said, Colonial States have no international position whatever.

See Oppenheim vol I p. 10

Again, trade and communication between these dispersed lands depend on the sea; and for strategic purposes the sea is all one, as we have been told by the highest naval authority.

"The British Empire presents the unique spectacle of a metropolitan State controlling by sundry and manifold relations a number of possessions and dependencies in different parts of the world, all of them relying for defence and protection mainly upon the imperial command of the seas. No other empire has been, or is, so constituted; and this geographical situation lies at the base of our Colonial policy. Great Britain has acquired, during the course of the nineteenth century, the habit of holding her possessions in North America and Australasia upon the very singular political tenure of sovereignty by mutual consent."[1]

Here is a solidarity capable of grave consequences. The mother country and the Colonies, like partners, are liable for each other's acts to the uttermost farthing. External unity of this kind seems to require some internal unity of direction to make it prudent for reasonable men to accept its attendant risk. According to strict legal theory, that unity is given in the supremacy of the King, exercised either in the Parliament of the United Kingdom or through Ministers responsible to it. But this has long been a

[1] Sir A. Lyall, *Life of the Marquis of Dufferin and Ava* (1905), i. 229.

legal fiction. The partnership cannot at this day be treated as a one-man company in which the parent is the sole manager. Our Colonies are autonomous in their internal affairs as fully as the colonies of Greek cities were, and in external affairs the tendency is to stop only at matters which may touch peace and war. There is still a senior partner holding and staking most, but the junior partners are not merely members of the family admitted to nominal shares. And there are no partnership articles.

The obsolete Policy of Drift.—The national faculty of compromise has enabled us hitherto to carry on the business somehow, but can we go on trusting to compromises and accidents? Is it worthy of this Empire to have no policy for the management of its affairs, as a whole, but a policy of drift? Only forty years ago drift was accepted, and, what is more, was thought by well-informed public servants to be in the direction of independence. The Colonies, as they grew up, had much better go their own ways, and leave off troubling us at home with their affairs; and this was not an opinion of one school or party, but a standing tradition of the Colonial Office. An interesting passage in Sir A. Lyall's life of Lord Dufferin [1] shows that this tradition of preparing for separation was accepted by Sir Henry Taylor in 1864, and by Robert Lowe as late as 1872. Lord Dufferin's brilliant viceroyalty in Canada had much to do with putting an end to it. We have just been reminded that the late Lord Norton (as orthodox a Conservative as Lord Sherbrooke was an orthodox Liberal) deliberately maintained it in a book published in 1869. There was no specially British perversity in this want of foresight. In fact, during the half-century between the fall of Napoleon and the end of the American Civil War the judgment of the best informed persons in Europe on the future of national politics in both Europe and America was almost invariably wrong. Perhaps it was beyond ordinary human wisdom at that time to perceive that before the end of the nineteenth century there would be other Powers newly grown or consolidated on land, and other navies on the seas, or that the Antipodes would have become a good deal less remote; still less that the gift of independence as distinguished from self-government—the renunciation of the British flag and British citizenship—would be so costly aud burdensome that, apart from dislike to separation on any other ground, the Colonies would desire it least of all things. That way of cutting the knot is outside practical politics now. A very learned Canadian lawyer has indeed suggested reducing the link between Great Britain and Canada to a mere "personal union," such as existed between England and Scotland under the Stuarts. He did not explain what was to happen if the British Ministry and the Canadian Ministry (which by his plan were to be quite unconnected) failed to agree on any matter touching common interests. A bold assumption of personal authority by the King might well be the only passage out of such a deadlock; and no one here needs to be told that this would be not innovation,

[1] Vol. i. p. 285.

but revolution. It has not been seriously proposed that Canada shall have the power of involving the whole Empire in war without consulting the Home Government, but such is the natural consequence of some things that some Canadian politicians have said.

Commerce and Constitution-making.—If, on the other hand, we are to strengthen the ties, it does not seem that any merely commercial arrangements will be sufficient, or that any formal constitution-making is practicable. Tariff reformers are among those with whom I am working, but they do not put their trust in preferential tariffs alone; and for my own part, regardless of the merits of any possible scheme of imperial economics, I doubt whether any such matter can even be adequately discussed among the States of the Empire without much better means of consultation than exist at present. As for any kind of formal constitution, it assumes the consent of several independent legislatures, and involves a considerable modification of their existing authority. I am not aware of any reason for thinking that the Parliament of the United Kingdom would easily be persuaded to reduce itself by a solemn act to a mere State Legislature, or that the Colonial Governments would be willing to surrender any substantial part of their autonomy to some new Federal Senate or Council. All the information at our disposal goes to show that nothing of the kind has any chance of being accepted, or even of seeming plausible enough to induce any Ministry to take it in hand. Besides, it is notorious that of late years, by reason of causes not the less effectual because they are irrelevant to the merits, constructive and systematic legislation on any considerable scale has become not less but more difficult. And this would be a legislative construction of unprecedented magnitude. No one, I believe, is now found to advocate direct representation of the Colonies in Parliament. This, if practicable, would make it an Imperial Parliament in a real sense (the present historical epithet is only a survival of the mediæval protests against the King of England being supposed inferior to the Emperor, and the Reformation protest against papal jurisdiction). But there are at least three fatal objections, besides that which is common to all schemes involving ambitious legislation: the inconvenience of increasing the number of the House of Commons, the enormous difficulties of allotting representation in due proportion to the several constituents of the Empire, and the want of probability that the Colonies would send us their best men, even if they consented at all. Addition of a certain number of distinguished persons from the Colonies to the House of Lords as life peers would be harmless and perhaps of some use, but inadequate; moreover, it is doubtful whether such persons, after any lengthened residence here, would carry much weight beyond that of their individual opinions.

A permanent Council of Advice.—We have then to look for some plan which will avoid elaborate legislation and formal change in the Constitution. If possible, it should also be capable (the whole matter being novel and ex-

perimental) of being enlarged or modified according to what is found most useful by trial. It seems that we must distinctly renounce the invention of any new kind of executive or compulsory power. No such power would be accepted by the Colonies, unless our information is wholly at fault. We must therefore be content with a council of advice which will have only what is called "persuasive" authority. My own expectation would be that, if such a council were once effectually constituted, including the fitting persons and furnished with proper information, its advice would come to have great weight, and ultimately take a definite place in the customs of our Constitution. But it would no more detract from the general responsibility of the King's Ministers than the Committee of Imperial Defence does at present; and in the same way it would not affect the constitutional powers or responsibility of any Colonial Ministry. It cannot be supposed, however, that a council of this kind could often meet in its full strength. Whatever its exact relation to the conference of Colonial Premiers might be (on which I will say a word presently), it must include, on special occasions, Colonial statesmen not habitually residing in England. Therefore provision will be needed not only for keeping minutes of the council's proceedings, but for interim communications by letter or cable, or by the delegation of occasional representatives for special purposes. This is as much as to say that a permanent secretary's office is required; and it must not be dependent on any existing department, but immediately under the President of the Imperial Council or Committee. Further, we want a more systematic method of preparing the way for profitable consideration of many kinds of affairs touching imperial interests. The existing means of the Colonial, Indian, and Foreign Offices are not sufficient or appropriately organised for this purpose. The new secretariat should have at its disposal both the best and most recent information and the conclusions of expert committees; in other words, we suggest a standing Imperial Commission to serve as a general intelligence department for matters outside the technical functions of the Admiralty, the War Office, and the Committee of Imperial Defence. It would be possible, and at need, it is submitted, useful, to work this part of the scheme without the rest. At present, however, it is my business to set forth the whole in what we conceive to be its due proportions.

Its Constitution—The Privy Council.—First, as to the constitution of an advisory council for the Empire. The most regular and easy way of establishing it would be in the shape of a Committee[1] of the Privy Council. This idea was published at least fourteen years ago, before there was any general interest in the subject. It has occurred independently, with only slight variations, to several persons, and has on the whole been very favourably received. Such a committee, which might be called the Imperial

[1] Perhaps it is not as generally known as it should be that the meetings of the Council itself are purely formal. It would not now be possible, consistently with parliamentary government, to make them otherwise.

Committee (but whether Committee, Board, or Council is rather a detail), would be marked from the outset as being a dignified and important body not attached to any particular department, but concerned with the affairs of the Empire as a whole. It would not meddle with the art of war, which is already well taken in hand by the Committee of Imperial Defence, though it is quite possible that useful communications might pass between the two bodies. Its province would be questions involving matters of Imperial interest not confined to one colony or dependency, and not capable of being disposed of by the action of the Colonial Office or any other single department of State. For dealing with such questions by way of information and advice a revival of the ancient functions of the King's Council in a form appropriate to modern requirements appears preferable to any violent innovation. Mr. Reeves has indeed suggested that (presumably because the nature of the Privy Council and its Committees is no better known to the general public in the Colonies than at home) the plan is liable to be misunderstood and disliked. This objection, coming from a specially qualified critic anxious to promote the general purpose, cannot be ignored; but, as I find no mention of it in any other communication, and we have received full approval of the proposed method from eminent persons in New Zealand and in more than one State of the Australian Commonwealth, I cannot think it formidable enough to outweigh the merits. One such correspondent, a practical statesman, writes:

"The Privy Council is an ancient historic power in the realm which could be most happily revived for a strictly modern development of functions of very great value. It is distinctly the best suggestion yet for combining the representative, administrative, and consultative elements of government without prematurely forcing any of them into a too rigid form."

It must be clearly understood that no proposal is now made either to bind any Colonial Government beforehand to the acceptance of any decision which it has not specifically approved, or to interfere with the power and duty of the King's Ministers here to take prompt and decisive action, at need, on their own responsibility. We have lately had a striking example of the wholly unexpected emergencies that may occur. Such occasions, moreover, are not limited to warlike action or preparation, as those of us know who are old enough to remember the purchase of the Suez Canal shares. Not to hamper the executive authority of the Central Government, but to strengthen it for action by the fullest and most intimate acquaintance with the conditions of the Empire and the mind of its component States, is the object aimed at.

The Conference of Premiers.—As to the constitution of the Imperial Committee, the nucleus of it exists already in the Conference of Premiers which met in 1902, and is expected to meet again next year. The Premiers

of the Dominion, of the Commonwealth, and of New Zealand are already Privy Councillors, and no good reason appears why their successors, and the future Premiers of a confederated South Africa, should not have the same rank as a matter of course. The Colonial Secretary would be a necessary member (though, for reasons I shall mention, I do not think he ought to preside), and all the heads of the great departments would also be members of the Committee, though they would not all be summoned to every meeting. As in the case of the Judicial Committee, the selection of the persons to be convened out of the whole number would depend upon the nature of the business on each occasion. For example, the Secretary of State for India would not be wanted to take part in considering the report of an expert committee on a question (let us say) of mail subsidies in the Pacific. But there might be other questions in which the Australasian Colonies and India had material common interests, and in which, therefore, India could not go without representation.[1] The Crown Colonies would constantly, and for the present sufficiently, be represented by the Secretary of State. It is conceivable that now and then, when the business was of special importance, the venue might be transferred, so to speak, to the Cabinet by summoning one or two select members of the Imperial Committee to attend a Cabinet Council; but, as the Imperial Committee would itself include two or three leading members of the Cabinet, it does not seem likely that the Cabinet would need any further information. Privy Councillors, having once become members of the Imperial Committee, would not cease to be members of it by resigning office on a change of Ministry; and it might often be discreet and profitable, in matters not leading to a Cabinet decision of a controversial kind, for ex-Ministers to be invited to give the Empire, as being above parties, the benefit of their experience, and to add a new illustration to the just and dignified name of "His Majesty's Opposition." The same observation applies to any ex-Premiers of Colonies whose services may happen to be available. On the other hand, there would be nothing to prevent the occasional attendance of skilled persons not being members of the Privy Council. I do not mean only or chiefly politicians; explorers, merchants, engineers, leading shipowners might all have things to say which they would rather not put in a written report. Outsiders have been invited to attend the Cabinet itself for special purposes. The President of the Imperial Committee would naturally be the Prime Minister, or some prominent member of the Government acting for the whole. This is not a mere point of form. There must be no doubt that the Imperial Committee or Council belongs

[1] It is proper to say that difficulties have been felt by some of us about the inclusion of India; but those difficulties referred, I think, to some scheme of definite and more or less proportional representation of the Colonies, and no such scheme is now proposed. I do not myself see how India could be excluded. There are South African questions affecting India at this moment.

to the Empire, and is not annexed to the Colonial Office or any other particular department. A merely departmental council would be of no use at all: the case of the Indian Secretary's Council, a statutory body having quite definite control in financial matters, is not analogous. It would even be rather undesirable for the Colonial Secretary to act as the Prime Minister's delegate on the Imperial Committee. The old jealousy of the Colonial Office and "government from Downing Street" is not yet quite extinct, though we have done our best at home of late years—perhaps not without some excess in reaction—to remove its causes. The Colonies do not want to be at some times neglected and at other times effusively flattered, but to be dealt with in a straightforward businesslike manner.

The Necessity for Continuity.—One obvious remark is that the Colonial Premiers cannot be in England oftener than once in four or five years. But we have spoken of the Imperial Committee as having a continuous existence, and we attach importance to that quality. How is the Committee to exist to any practical purpose when the premiers are not here? Now in the first place every member of an Imperial Committee would be entitled to communicate directly with the Prime Minister as well as with his colleagues, and much useful communication could take place by letter or cable without any formal meeting at all. It is not unknown that when meetings of various bodies do take place the most important part of their transactions is not always that which is embodied in resolutions and recorded in minutes. A standing usage of free and confidential intercourse among the States of the Empire would have other and greater worth than could be measured by the resulting quantity of blue-books. Again, there would be intermediate business more in the nature of exchange of information and views than of solemn deliberation on any defined question of policy. No reason is apparent why the carriage of such business should not be delegated by the Governments concerned to their respective Agents-General or to other fit persons who might be on the spot: and no trouble that I can see would arise on the score of any persons so designated not being, as they could not always be, Privy Councillors. Whether such delegation would be standing or occasional is a point on which no opinion is offered. I do not myself see why it should not be left to each Government. Neither do I see why any Colony should not be represented, if it thought fit, by a special Minister for External Affairs (as a Canadian critic has suggested) rather than its Premier; but I doubt whether this would be generally approved. You will note that the scheme here blocked out provides a body small enough to transact really confidential business, and at the same time elastic enough to reinforce its meetings when convenient; and also that, being largely automatic, it escapes the difficulty, which most of us have felt to be considerable, of devising any kind of elective representation on an imperial council. Ingenuity seems to be rather wasted in trying to make nice adjustments of numbers or influence in a purely deliberative body which would

record collective or separate opinions rather than take votes, and would probably never pass a formal resolution unless it was unanimous.

The Council and the Premier.—It may be said that the existence of an Imperial Committee, normally presided over by the British Prime Minister, and in any case in direct communication with the Cabinet, will add a new burden to duties which already touch the limit of any one man's capacity. The answer is that the Prime Minister and the Cabinet are already answerable for the whole business and policy of the Empire. There is nothing in any possible proceedings of an Imperial Committee to make them more so. But if it be said that the present burden of the Cabinet, and of the Prime Minister in particular, is tolerable (if it is) because many matters are left to take care of themselves until they become urgent, then we reply that this is exactly the weak joint in the harness of the Empire which we want to see mended; and here is our suggestion for mending it, the best we can think of. We shall be very glad if any one can find a way to mend it better. Again, some one may say we propose to give a large discretion to the Prime Minister or the secretary of the Imperial Committee, as to the working composition of that body; for no one except the presiding Minister and the Colonial Premiers, when able to attend, would be entitled to be present at any particular meeting. This is quite true. We have found insuperable objections to any rigid system of organising a consultative body for imperial affairs; and if we are to have an elastic system, it can be worked only by reposing a good deal of confidence in some one to work it with uprightness and intelligence. After all, it does not seem an extravagant compliment to the quality of our statesmen if we propose to trust the responsible chief of the King's advisers about half as much as we trust managing directors, bankers, and solicitors in our private affairs. Besides, abuse of an imperial and non-partisan institution for domestic partisan ends of any kind would be far too risky a venture for the most ambitious and least scrupulous of Ministers. I can think of no proceeding that the House of Commons would be more certain to resent.

The Authority of an Advisory Committee.—Another objection of an opposite kind is that a merely advisory committee which has no positive authority, and whose members have, as such, no defined responsibility, is not likely to acquire any serious influence or importance. This is in a general way plausible enough; but I would point to the excellent work already done in a position certainly not more promising. The Committee of Imperial Defence, and another body of much longer standing, but even less known to the public, the Colonial Defence Committee, have no more authority or responsibility than we propose to give to the Imperial Committee. This has not prevented them from handling many questions for which merely departmental action was not competent, and which could have been dealt with by correspondence between departments only in a cumbrous fashion, if at all. As to the value of the results, it is only since the Committee

of Imperial Defence has been in full working order that the phantom of a Continental invasion—330,000 men, I think, was the latest official number—has been finally exorcised from the War Office, to give place to a sound view of our strategic requirements and policy based on the true doctrine of sea power.[1] I cannot help thinking that a year or two of an Imperial Committee for civil and general business might have a greater effect in clearing up misconceptions and dispelling illusions than many years of desultory talk.

Before leaving this division of the scheme I may add that it would be a possible alternative to form a Committee for non-military imperial affairs after the manner of the Committee of Imperial Defence, which is not a Committee of the Privy Council or of any other body, and does not even consist in form of any settled list of persons, although its acting members are in fact pretty constant. A board of this kind might perhaps be found easier to set up than a Committee of the Privy Council, though I do not know why it should; but it would be less dignified, less of a guarantee to the public at home and beyond seas that the Empire's business was being taken seriously, and more at the mercy of personal and executive discretion; indeed, its existence would be very little security against a reaction to the old separatist views, whereas a standing Imperial Committee of the Privy Council, with a place in the Constitution as recognised as that of the Judicial Committee, would make such a reaction almost impossible. For these reasons the alternative does not seem desirable, though it is right to mention that it has occurred to us and been considered.

An Imperial Secretariat.—We now come to the second part of the scheme, an Imperial Secretariat and Intelligence Department. It is evident that if an Imperial Committee is to have a continuous existence and the means of profiting by its own experience, it must have some one to keep its records. These records will be confidential for the most part, and for this reason alone the secretary must be a person of considerable standing and well acquainted with public business. As his department would have no executive duties to speak of, he would be able to devote his time to acquiring and systematising knowledge of many kinds for the use of the Cabinet and the Imperial Committee. He would be in fact a permanent under-secretary directly attached to the Prime Minister, but free from the usual departmental routine. He would need a personal staff of not more than two or three good clerks, and perhaps one confidential assistant; but it does not at all follow that the duties would be nominal, for, under the ultimate direction of the Imperial Committee, it would be the secretary's province to organise inquiry and receive and arrange information for its use by the means we shall now explain. His work should not encroach upon local or other inquiries which are wholly within the competence of

[1] See Lord Lansdowne's speech in the House of Lords on March 30, delivered since I wrote these words.

the Colonial Office, the Foreign Office, or the India Office, and can be dealt with, so to speak, as domestic matters. When the Imperial Committee wants information of that kind it will be best obtained through the department concerned. But there is a considerable field, at present no man's land, where the spheres of two or more departments intersect. Merchant shipping and copyright are the first examples that come to hand of such topics, and as good as any. And, as one well-informed correspondent observes, "Imperial problems outranging the scope of any one particular Government office are not confined to the Colonial sphere. They arise on all sides." As things are now, the several States of the Empire have neither full nor exact knowledge of one another's doings in the same or kindred matters, and the result is that difficulties of various kinds arise, and there is useless diversity or even conflict in legislation for identical purposes. The proposed Imperial Under-Secretary,[1] Clerk of the Imperial Committee, or whatever he might be called, would be accessible to the Colonial Governments through their authorised representatives. If and when they found it convenient they might communicate with the Imperial Committee through his office: this might be left to work itself out, understanding always that no rights of the Colonial Office were to be encroached upon, and that the Colonial Secretary must, in any case, be kept fully informed.

The permanent secretary would perhaps not find himself so idle as might be thought at first sight, even if he confined himself to salving and digesting useful knowledge out of overlooked and forgotten publications. But we think the best living information ought to be at the service of the Imperial Committee through its secretariat; and we think this can be most effectively done, without ostentation and with very little expense, by the constitution of a permanent Imperial Commission whose members would represent all branches of knowledge and research, outside the art of war, most likely to be profitable in Imperial affairs. Not only learned official persons would be included in such a body, but men of widespread business, travellers, ethnologists, comparative students of politics might all find scope for excellent work. It need not, and I think should not, be paid work. It would be as willingly done without pecuniary reward as the more formal and laborious work of Royal Commissions, as to which there has never been any difficulty. The honorary title of Imperial Commissioner would be conferred on these selected persons on the recommendation of the Prime Minister, who would in the first instance consult the permanent staff of the Imperial Committee. When the Commission was once in existence, it might be well for it to hold occasional meetings to make its existence visible, and those meetings might usefully recommend other qualified persons. Every Imperial Commissioner would have access to the secretariat, and would be able to impart any special knowledge of his own, with the assurance that it was in safe

[1] "Imperial Secretary" would not do, as it would carry a false suggestion of a position like a Secretary of State's.

hands and would not be neglected. Many travellers and others learn things which they cannot publish, and which are not exactly in the province of any one department, though capable of being used for the public good.

Expert Committees.—But I should conceive that the business of an Imperial Commission would in ordinary course be mostly done by expert committees dealing with special subjects. For one example, the question of a single final Court of Appeal for the Empire is urgent, but we shall never get a plan for it properly worked out with our present makeshift ways. A strong expert committee, without the solemnity of a Royal Commission, should take this in hand and prepare for the consideration of His Majesty's Government and the next Colonial Conference the constitution of an Imperial High Court, to include members having the due qualifications from any part of the Empire. What is wanted here is not a commission and formal evidence or memoranda, but half a dozen men at most, who can quietly find out what is practicable and what not, and whose united opinion will command respect. With some such preparation there is nothing insoluble in the problem; without it, no Government will commit itself to a project which enemies can always represent in a light offensive to the House of Lords, the Colonies, or both. Another topic not less urgent, though of less ample scope, is copyright law. The statutes in force in various parts of the Empire are incongruous, ill arranged, and for the most part ill penned (the principal Act passed by the Imperial Parliament in 1842 being the worst); and there is danger of real conflict between home and Colonial statutes, which has more than once been averted not without trouble. The report made by a Royal Commission more than a quarter of a century ago still slumbers in a blue-book, and the subject has never really been considered from an imperial point of view. Problems of this kind, moreover, are chronic. A standing committee on uniformity of laws within the Empire would find quite enough matter to occupy a fair portion of the leisure of busy men, as at least some of its members would be. Again, there are various affairs of communication and interstate commerce, if one may transfer the American expression to a transoceanic scale, which expert committees might with advantage clear up and set in order for authoritative treatment. It is more than probable that other subjects would occur to competent persons more versed in them than myself, as fit to be dealt with and reported on in like manner.

In course of time the secretariat, through reports of committees, and also to some extent by special communications, would possess a unique body of information. Some of this might be strictly confidential and for the Cabinet and the Imperial Committee alone. Some would be at the disposal of the Colonial Governments and of the Home Departments concerned. Some, I am inclined to think much, could safely be made accessible to all serious inquirers, or even to the public under no greater restriction than is found necessary at the British Museum and

the Record Office; and some of this portion might from time to time be published with advantage. When we begin to look so far forward, it may well be thought that the work of organising the Commission and its sub-committees, and keeping its reports in order, would be more than the Permanent Secretary of the Imperial Committee could undertake, and that he would need a colleague or superior assistant with distinct functions. It would be proper, however, to begin with a quite modest establishment and expand it later as required. There may quite conceivably be an honourable and useful place in the scheme for existing societies—this Institute, for example—whose object is to increase knowledge of matters touching the Empire and to promote interest in them. But it would obviously be premature to enter on the rather delicate consideration of the means whereby such bodies could be brought into relation with an Imperial Secretariat and Commission without giving them too much of an official character.

Conclusion.—Within the space at my command, expressing the ideas of my colleagues to the best of my ability, and I trust with substantial faithfulness, I have tried to show that we have at least the materials for a coherent plan, which can be put in action without revolutionary change, at no great cost, and with very moderate labour in proportion to the fairly probable results. If I have underrated any difficulties, it has not been my desire to do so. Work worth doing has never been accomplished without them. Walking and speaking are quite difficult arts; and our other daily feat of knowing that we live together in a real world is so far from easy that after more than two thousand years of speculation we are not agreed how it is done, and still have no better reason for believing it possible than the fact that it happens. To master the difficulties of the problem now before us we need all the qualities of all the races in the Empire: the tenacious industry of the Saxon, the long-sighted judgment of the Scot, the brilliant fervour and sympathetic imagination of the Celt, the adventurous daring of the Dane, the shrewd businesslike sense of the Norman (not forgetting that our purest Norman stock, after the Channel Islands, is in the Province of Quebec), and the invincible patience and faith in destiny that have carried Asia through secular vicissitudes. Our kindred beyond the seas of the rising and the setting sun have called on us to wake, and we answer the call in good hope, with the words that an English lover of the sea conquered from the East and made his own:

> Awake! for Morning in the Bowl of Night
> Has flung the Stone that puts the Stars to Flight:
> And lo! the Hunter of the East has caught
> The Sultán's Turret in a Noose of Light.

THE NORTHERN SECURITIES CASE.

[*Contributed by* WILLIAM MITCHELL ACWORTH, ESQ.]

History of the Case.—To understand the decision in the case of the Northern Securities Company given by the Supreme Court of the United States on March 14th, 1904, a preliminary word is necessary as to the history of the case and as to the statute law affecting it.

The Northern Pacific and the Great Northern are two great railway companies, each with about five thousand miles of line, extending from St. Paul, four hundred miles north-west of Chicago, to the Pacific Coast. Though each company has its own domestic territory, for through traffic they are naturally competitors. As long ago as 1893 the Great Northern acquired control of the Northern Pacific, then in an insolvent condition. This control, in the particular shape which it originally took, was declared by the United States Supreme Court, in the case of *Pearsall* v. *G.N.R. Co.* (161 U.S. 646), to be illegal under the law of Minnesota, the State in which the Great Northern Company was domiciled. But a decision, that the Great Northern Company might not own the capital of the Northern Pacific, could not prevent individual Great Northern shareholders from acquiring large holdings of Northern Pacific shares, and in practical fact for the last ten years the latter company has been controlled by the former.

In the autumn of 1901 the two companies jointly bought up practically the whole share capital of the Chicago, Burlington, and Quincy, another great company spreading over the territory for a thousand miles west and north-west of Chicago. Then the Union Pacific, an enormous organisation controlling fifteen thousand miles of railway, including two other routes to the Pacific Coast, fearing that its access to Chicago over the lines of the Burlington Company might be interfered with, set to work to buy a majority of the stock of Northern Pacific, so as indirectly to obtain a share in the control of the Burlington system. After a financial battle which shook the whole financial world of America, and during which Northern Pacific shares were forced up to nine times their nominal value, a settlement was arrived at. A new company called the Northern Securities Company was incorporated under the laws of the State of New Jersey, to it were turned over the entire stock holdings of the

Northern Pacific and Great Northern interests on the one hand, and of the Union Pacific interests on the other, and a board of directors representing in agreed proportion the rival interests was elected. The Northern Securities Company, it will be seen, controlled three companies—the Great Northern, the Northern Pacific, and the Burlington. But the case only concerned itself with the control of the two former.

Action, in the shape of a bill in equity for an injunction, brought under the Act of 1890 "to protect trade and commerce against unlawful restraint and monopolies"—commonly called the "Sherman Act" or the "Anti-Trust Act"—by the Attorney-General of the United States before the Federal Circuit Court for the District of Minnesota, was, after considerable delay, taken by the Federal Government. The Circuit Court granted the injunction; the company appealed; and, by a majority of five to four, the Supreme Court confirmed the judgment below. It may be here mentioned that the Supreme Court had some years before, contrary to what was the prevailing legal opinion, and contrary to the expressed intention of the authors of the Act, decided that the Anti-Trust Act applied to railway companies.

The Sherman Act: A Review of the Judgments.—The important provisions of the Act are as follows:—

S. 1. Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States [1] or with foreign nations is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanour, and on conviction thereof shall be punished by fine not exceeding five thousand dollars or by imprisonment not exceeding one year, or by both said punishments at the discretion of the Court.

S. 2. Every person who shall monopolise or attempt to monopolise or combine or conspire with any other person or persons to monopolise any part of the trade or commerce among the several States or with foreign nations shall be deemed guilty [etc., as in s. 1].

S. 4. The several Circuit Courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. . . .

S. 8. "Persons" include "corporations" . . . existing under . . . the laws of any State. . . .

Four separate judgments were given in the case. As their total length amounts to something like a hundred pages of the English law reports, it is impossible to do more than give a very brief summary of them here.

[1] It must be noted that Federal jurisdiction only extends to commerce between the States or with foreign nations. A conspiracy in New Jersey in restraint of New Jersey trade is a matter for the State Courts of New Jersey alone. The distinction is important, as will be seen from the judgments.

The decision of four judges in favour of the Government was given by Hanlan J., with whom three other judges concurred. Mr. Justice Hanlan, after reading the Act and relating the history, held that the evidence fully sustained the allegations in the bill "that the Securities Company was not organised in good faith to purchase and pay for the stocks of the Northern Pacific and Great Northern Companies, but solely to incorporate the pooling of the stocks of the said companies, and carry into effect the above combination; that it is a mere depositary custodian holder or trustee of the stocks; . . . that its shares are but beneficial certificates against the said railroad stocks to designate the interest of the holders in the pool. Summarising the principal facts, it is indisputable . . . that the stockholders of the Great Northern and Northern Pacific Railway Corporations, having competing and substantially parallel lines, . . . combined . . . to manage or cause to be managed both lines of railroad as if held in one ownership . . . under which competition between the constituent companies would cease. . . . No scheme or device could more certainly come within the words of the Act."

The judgment then goes on to review previous judgments of the Court. These judgments are held to establish certain propositions, the chief of which are:—

1. That the Act is constitutional.
2. That it applies to railways.
3. That, although it has no reference to the mere manufacture and production of articles or commodities within the limits of the several States, it embraces every combination which directly and necessarily operates in restraint of trade among the several States, even though such restraints may not be unreasonable.

Dealing with the various arguments advanced at the bar for the defendants, the judgment goes on to negative the contention that, as the New Jersey corporation had under New Jersey laws a right to hold stock in railways in other States, a Federal injunction would be an infringement of the rights of the State of New Jersey, and to point out that the Federal Court does not claim to control the ownership, but to prevent such a use of the ownership as conflicts with Federal laws. It declares that, if the Securities Company cannot be touched by Federal law, all the railways in the country might form one combination, and yet Congress, though invested by the Constitution with power "to regulate commerce between the States," would be powerless to interfere.

On the contrary, the judgment holds that "the power of Congress over commerce extends to all the instrumentalities of such commerce and to every device that may be employed to interfere" with it. "The Federal Court may not have power to forfeit the charter of the Securities Company, it may not declare how its shares of stock may be transferred on its books, nor prohibit it from acquiring real estate, nor diminish or increase its

capital stock. But . . . it may lay hands upon that company and prevent it from doing that which if done will defeat the Act of Congress. . . . No State can endow any of its corporations or any combination of its citizens with authority to disobey the national will as manifested in legal enactments of Congress." After reviewing many previous decisions, the judgment deals with the argument that the enforcement of the letter of the Anti-Trust Act would be fatal to the trade of the country, and declares that "even if the Court shared the gloomy forebodings in which the defendant indulged, it could not refuse to respect the action of the legislative branch of the Government, if what it has done is within the limits of its constitutional power." The Court accordingly proceeded to confirm the decision of the Circuit Court, finding that the defendants had entered into a combination or conspiracy in restraint of trade; decreeing that the Securities Company be enjoined from acquiring further stock of the two railway companies or from voting in respect of any such stock which it already held; and that the two railway companies be enjoined from paying dividends over to the Securities Company or allowing its representatives to interfere in their management; but permitting the Securities Company to hand back to the respective railway companies the stock which it had acquired from them respectively.

The Judgment of Mr. Justice Brewer.—It will be observed that the judgment summarised above is only the judgment of a minority of the Court, four judges out of nine. But a fifth judge, Mr. Justice Brewer, delivered a concurring judgment. His judgment, however, opened with the words, "I am unable to assent to much that is said in the opinion just announced." Further, he stated that, while he had concurred in previous decisions under the Sherman Act, and still thought those decisions had been right, he thought some statements in those opinions had gone too far. "Instead of holding that the Anti-Trust Act included all contracts, reasonable and unreasonable, in restraint of trade, the ruling should have been that the contracts there presented were in themselves unreasonable restraints of interstate trade and therefore within the scope of the Act. Congress did not intend by that Act to reach and destroy those minor contracts in partial restraint of trade which a long course of decisions at common law had affirmed were reasonable and ought to be upheld. The purpose rather was to add a statutory prohibition with prescribed penalties and remedies, to nullify those contracts which were in direct restraint of trade, unreasonable, and against public policy. Whenever a departure from common law rules and definitions is claimed, the purpose to make the departure should be clearly shown. Such a purpose does not appear and such a departure was not intended. Further, the general language of the Act is limited by the power which the individual has to manage his own property and determine the place and manner of its investment. Freedom of action in these respects is among the inalienable rights of every citizen."

If an individual owned a majority of the stock of the Great Northern, "he could not be prevented by any Act of Congress" from purchasing even a majority of the stock of the Northern Pacific. But that is not this case. This is "a combination by several individuals separately owning stock in two railway companies to place the control of both in a single corporation. That corporation was a mere instrumentality by which separate railway companies were combined under one control. . . . The transfer of stock was a mere incident, the manner in which the unlawful combination to destroy competition and thus to restrain trade was carried out." After pointing out that the method of the Northern Securities Company might be extended indefinitely till a single corporation, whose stock was owned by three or four parties, was in control of the whole transportation system of the country, Mr. Justice Brewer concluded his judgment by saying: "I have felt constrained to make these observation for fear that the broad and sweeping language of the opinion of the Court might tend to unsettle legitimate business interests, stifle or retard wholesome business activities, encourage improper disregard of reasonable contracts, and invite unnecessary legislation."

The Minority Judgment of Mr. Justice Holmes.—Two minority judgments were given, the one by Mr. Justice Holmes—the Chief Justice, Mr. Justice Peckham and Mr. Justice White concurring; the second by Mr. Justice White—the Chief Justice, Mr. Justice Holmes and Mr. Justice Peckham concurring. Speakly broadly, the former judgment discussed the question whether the case fell within the Act, the latter the question whether Congress has under the Constitution power to deal with it. Mr. Justice Holmes said: "Great cases like hard cases make bad law. . . . The question to be decided is whether under the Act it is unlawful at any stage of the process if several men unite to form a corporation for the purpose of buying more than half the stock of each of two competing interstate railroad companies, if they form the corporation, and if the corporation buys the stock. I will suppose further that every step is taken from the beginning with the single intent of ending competition between the companies. I make this addition, not because it may not be and is not disputed, but because, as I shall try to show, it is totally unimportant under any part of the statute with which we have to deal.

"The statute with which we have to deal is a criminal statute. The two sections on which the Government relies both make certain acts crimes. That is their immediate purpose and that is what they say. The words cannot be read one way in a suit which is to end in fine and imprisonment and another way in one which seeks an injunction. . . . So I say we must read the words before us as if the question were whether two small exporting grocers should go to jail.

"Again, the statute hits 'every' contract . . . and 'every' person who shall monopolise . . . 'any part' of the commerce among the several

States. There is a natural inclination to assume that it was directed against certain great combinations and to read it in that light. It does not say so. On the contrary, it says 'every' and 'any part.'"

Citing a previous judgment of the Court which said "the fact that trade or commerce might be indirectly affected was not enough to entitle complainant to a decree" (*United States* v. *E. C. Knight Co.*, 156 U.S.), the judgment continued: "Commerce depends upon population, but Congress could not on that ground undertake to regulate marriage and divorce. . . . This Act is construed by the Government to affect the purchasers of shares in two railroad companies, because of the effect which it may have, or, if you like, is certain to have upon the competition of these roads. If such a remote result of the exercise of an ordinary incident of property and personal freedom is enough to make that exercise unlawful, there is hardly any transaction concerning commerce between the States that may not be made a crime by the finding of a jury or a Court. The personal ascendency of one man may be such that it would give to his advice the effect of a command, if he owned but one share in each road. The tendency of his presence in the stockholders' meetings might be certain to prevent competition, and thus his advice, if not his mere existence, becomes a crime."

Mr. Justice Holmes then proceeded to deal with the authorities, going back to *Mitchell and Reynolds* (1 P. Williams). "Contracts in restraint of trade were," he concludes, "contracts with strangers to the contractor's business, and the trade restrained was the contractor's own. Combinations or conspiracies in restraint of trade, on the other hand, were combinations to keep strangers to the agreement out of the business. The objection to them was not an objection to their effect upon the parties making the contract, the members of the combination, or firm, but an objection to their intended effect upon strangers to the firm and their supposed consequent effect upon the public at large." These are the two classes of cases which he holds the Act was intended to deal with. The provisions of the Act cannot "apply to an arrangement by which competition is ended through community of interest—an arrangement which leaves the parties without external restriction. . . . It would seem to me impossible to say that the words 'every contract in restraint of trade is a crime punishable with imprisonment,' would send the members of a partnership between two trading corporations to prison, still more impossible to say that it forbade one man or corporation to purchase as much stock as he liked in both. Yet these words would have that effect if the clause of s. 1 applies to the defendants here. For it cannot be too carefully remembered that that clause applies to 'every' contract of the forbidden kind. . . . Size has nothing to do with the matter. . . . A monopoly of 'any part' of the commerce between the States is unlawful. . . . But the Act of Congress will not be construed to mean the universal disintegration of society into

single men, each at war with all the rest, or even the prevention of all further combination for a common end. . . . In my opinion there is [here] no attempt to monopolise. . . . There is no combination in restraint of trade until something is done with the intent to exclude strangers to the combination from competing with it in some part of the business which it carries on. . . . A partnership is not a contract or combination in restraint of trade between the partners unless the well-known words are to be given a new meaning invented for the purposes of this Act. . . . If I am wrong, then a partnership between two stage drivers who have been competitors in driving across a State line, . . . whether made after or before the Act, if now continued, is a crime.

"In view of my interpretation of the statute I do not go further into the question of the power of Congress. That has been dealt with by my brother White, and I concur in the main with his views. I am happy to know that only a minority of my brethren adopt an interpretation of the law which in my opinion would make eternal the *bellum omnium contra omnes* and disintegrate society, so far as it could, into individual atoms. If that were its intent, I should regard calling such a law a regulation of commerce as a mere pretence—it would be an attempt to reconstruct society. I am not concerned with the wisdom of such an attempt, but I believe that Congress was not entrusted by the Constitution with the power to make it, and I am deeply persuaded that it has not tried."

Mr. Justice White's View.—Mr. Justice White, in the second minority judgment, said, after reviewing the circumstances of the case: "Two questions arise. Does the Anti-Trust Act, when rightly interpreted, apply to the acquisition and ownership by the Northern Securities Company of the stock in the two railroads; and second, if it does, had Congress the power to regulate and control such acquisition and ownership. As the question of power lies at the root of the case, I come at once to consider that subject. . . . In testing the power of Congress I shall proceed upon the assumption that the Act of Congress forbids the acquisition of a majority of the stock of two competing railroads engaged in part in interstate commerce by a corporation or any combination of persons.

"The authority of Congress, it is conceded by all, must rest upon the power delegated by s. 8 of Art. 1 of the Constitution, 'to regulate commerce with foreign nations and among the several States and with the Indian tribes.' The proposition upon which the case for the Government depends, then, is that the ownership of stock in railroad corporations created by a State is interstate commerce wherever the railroads engage in interstate commerce." Admitting the plenary power of Congress to regulate commerce, the question is "not the scope of the power of Congress to regulate commerce, but whether the power extends to regulate the ownership of stock in railroads which is not commerce at all."

The judgment goes on to cite and comment on a definition of commerce,

given by Chief Justice Marshall in *Gibbons* v. *Ogden*, and "approved so many times since." "Commerce," said the great Chief Justice, "undoubtedly is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches and is regulated by prescribing rules for carrying on that intercourse." Accepting this definition, Mr. Justice White asks: "Does the delegation of authority to Congress to regulate commerce among the States embrace the power to regulate the ownership of stock in State corporations, because such corporations may be in part engaged in interstate commerce? Certainly not, if such question is to be governed by the definition of commerce by Marshall C.J. in *Gibbons* v. *Ogden*. . . . Can the ownership of stock in a State corporation be, by the most latitudinarian construction, embraced by the words 'commercial intercourse between nations and parts of nations'? . . . Can it in reason be maintained that to prescribe rules governing the ownership of stock within a State in a corporation created by it is within the power to prescribe rules for the regulation of intercourse between citizens of different States?"

Further, he lays down that the contention for the Government that Congress is entitled to regulate the ownership of stock in railroads chartered by State authority (in this case the States of Wisconsin and Minnesota respectively) is "absolutely destructive of the Tenth Amendment to the Constitution, which provides that 'the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people.' . . . Power to control the ownership of railroads [doing an interstate business] must necessarily embrace their organisation. Hence it would result that it would be in the power of Congress to abrogate every such charter granted by the States from the beginning, . . . or [to deal with] every consolidation of such State rail roads, even though such consolidation may have been expressly authorised by the laws of the States creating the corporations. . . . The principle that the ownership of property is embraced within the power of Congress to regulate commerce . . . is in my opinion in conflict with the most elementary conceptions of rights of property. For it would follow, if Congress deemed that the acquisition by one or more individuals engaged in interstate commerce of more than a certain amount of property would be prejudicial to interstate commerce, that the amount of property held or the amount which could be employed in interstate commerce could be regulated. . . . This Court long ago decided that the power to regulate commerce, conferred upon Congress, was 'general and includes alike commerce by individuals, partnerships, associations, and corporations' [*Paul* v. *Virginia*, 8 Wall]. . . . It may not be doubted that from the foundation of the Government, at all events to the time of the adoption of the Anti-Trust Act in 1890, there was an entire absence of any legislation by Congress even suggesting that it was deemed by any one that power was possessed by Congress to

control the ownership of stock in railroad and other corporations because such corporations engaged in interstate commerce. On the contrary, Congress . . . by the Interstate Commerce Act [1887] sedulously confined the provision of that Act to the carrying on of interstate commerce itself. . . . It also may be not doubted that from the beginning the various States of the Union have treated the incorporation and organisation of railroad companies and the ownership of stock therein as matters within their exclusive authority. . . .

Instances of Railroad Unification.—"I content myself with merely mentioning a few of the instances where great systems of railroad have been formed by the unification of the management of competitive roads, by consolidation or otherwise, often by statutory authority. . . . One of the illustrations—as to the New York Central system—is the case of the Hudson River Railroad on one side of the Hudson River and the West Shore Railroad on the other, both parallel roads and directly competitive, and both united in one management by authority of a legislative Act. It is indeed remarkable, if the whole subject was within the paramount power of Congress and not within the authority of the State, that there should have been a universal understanding to the contrary from the beginning. . . . Since the adoption of the Anti-Trust Act consolidations and unification of management have been carried on, when not prohibited by State laws, to a vast extent, and during all this time, despite the energy of the Government in invoking the Anti-Trust Law, no assertion of power in Congress under that Act to control the ownership of stock was ever knowingly made till first asserted in this cause. . . . Certainly the States have not so considered it. . . . Not long since, by authority of the Legislature of the State of Massachusetts, a controlling interest in the stock of the Boston and Albany Road passed to the New York Central system."

The judgment then passes in review previous Supreme Court decisions. In *County of Mobile* v. *Kendall* (102 U.S.) the Court declared that "language affirming the exclusiveness of the grant of power over commerce [to Congress] would be inaccurate when applied to legislation upon subjects which are merely auxiliary to commerce." In *Ashley* v. *Ryan* (153 U.S.) the Court went much further. In this case the purchasers of a number of railroads in various States consolidated them into one system and proposed to register it as an Ohio Corporation. The Ohio Secretary of State demanded a registration fee in respect of the entire capital of the consolidated system outside as well as inside the State. This was resisted expressly on the ground that it was an interference with interstate commerce. But the Court held, after a copious review of the authorities, that "the payment of the charge was a condition imposed by the State of Ohio upon the taking of corporate being or the exercise of corporate franchises, *the right to which depended solely on the will of the State*, and hence that liability for the charge was entirely optional and constituted no tax upon interstate

commerce and involved no attempt on the part of the State to extend its taxing power beyond its territorial limits." The italics are those of Mr. Justice White, whose judgment continues: "How a right which was thus decided to depend *solely* upon the authority of the States can now be said to depend solely upon the will of Congress, I do not perceive." (It is to be noted that the Ohio case is not referred to in the majority judgment.) Again, in the case of *United States* v. *E. C. Knight Co.* (156 U.S.) "it was held that, while the power of Congress extended to commerce as defined [by Chief Justice Marshall], it did not embrace the ownership of stock in State corporations, because the products of such manufacture might subsequently become the subjects of interstate commerce. The parallel between the two cases is complete. The one corporation acquired the stock of other and competing corporations by exchange for its own. It was conceded, for the purposes of the case, that in doing so monopoly had been brought about in the refining of sugar, that the sugar to be produced was likely to become the subject of interstate commerce, and indeed that part of it would certainly become so. But the power of Congress was decided not to extend to the subject because the ownership of the stock in the corporations was not itself commerce." (The only reference in the majority judgment to this case is in the following words: "In *United States* v. *E. C. Knight Co.* it was held that the agreement or arrangement there involved had reference only to the manufacture of sugar by those engaged in the alleged combination, but if it had directly embraced interstate or international commerce it would have been covered by the Anti-Trust Act and would have been illegal.")

Distinction between Ownership and Use.—The masterly judgment of Mr. Justice White carries on this distinction between ownership and use through a long chain of authorities. But it is equally incapable here of abridgment and of citation. Summing up, he repeats: "The instrumentalities of interstate commerce are subject to the power [of Congress] to regulate commerce. . . . But this is entirely different from the power to regulate the acquisition and ownership of such instrumentalities and the many forms of contracts from which such ownership may arise. . . . The distinction between the two has been from the beginning the dividing line demarking the power of the National Government on the one hand and of the States on the other. . . . The fallacy of all the contentions of the Government is to my mind illustrated by the summing up of the case for the Government made in the argument at bar. The right to acquire and own the stock of competing railroads involves, says that summing up, the power of an individual *to do* (italics mine) absolutely as he pleases with his own, whilst the claim of the Government is that the right of the owner of property *to do* (italics mine) as he pleases with his own may be controlled in the public interest by legitimate legislation. But the case involves the right to *acquire and own* not the right *to do* (italics mine). Confusing the

two gives rise to the errors which it has been my endeavour to point out. . . . Because I consider, for the reasons heretofore given, that Congress was without power to regulate the acquisition and ownership of the stock in question by the Northern Securities Company, and because, even if there were such power in Congress, it has not been exercised by the Anti-Trust Act, as is shown in the opinion of Mr. Justice Holmes, I dissent."

The Answer of the Majority Judgments.—After perusing the incisive judgments of the minority, a lawyer naturally turns back to the majority judgment to see precisely how it deals with the points therein raised. In answer to the point taken in Mr. Justice Holmes's judgment, that restraint of trade by an agreement of two former competitors to enter into partnership is not, according to ordinary canons of legal construction, a restraint of trade within the meaning of the Anti-Trust Act, not one word can be found in the judgment of Mr. Justice Hanlan. Mr. Justice White's point that acquisition of an instrument of interstate commerce is one thing, to be dealt with by the State, the use made of that instrument another and a different thing, subject to the control of Congress, is also not directly faced. "No scheme or device," says the majority judgment, "could more certainly come within the words of the Act . . . or could more effectively and certainly suppress free competition. . . . It cannot be doubted that Congress has power to declare illegal a combination that restrains commerce among the States. . . . What the Government here complains of is the existence of a combination . . . which restrains interstate commerce." But in fact, though copious citations are made in the judgenmt from the bill exhibited by the Attorney-General, no actual and overt restraint was apparently pleaded at all. The Bill alleged that the Securities Company had acquired the stock of the competing railways and was acting as owner thereof, but not that as such owner it had committed any overt acts in restraint of trade. Further, the majority judgment says that "in all prior cases in the Court the Anti-Trust Act has been construed as forbidding any combination which by its necessary operation destroys or restricts free competition." But Mr. Justice White's analysis of the cases, the sugar refinery case in particular, and his citation of previous judgments, seem rather to show that the Federal Court not so much forbade combination as dealt with its necessary operations after they had been evidenced by acts. Beyond pointing out the divergent points of view from which the majority and the minority approached the question, it is evidently not for a citizen of another country to criticise the judgments.

The Policy of the Prosecution.—But one point may be noted in conclusion. Though, as has been seen, the Government escaped defeat by the narrowest possible majority, regarding their action in bringing suit from the political point of view—the point of view not of politics but of policy—there is much to be said in its favour. The Western States have always been excessively jealous of the great railway companies. And where

a territory as large as a first-rate European State is dependent for its very livelihood on a single company, and that company mainly owned in New York or even London, such jealousy is only natural. That Mr. Hill, the autocrat of the Great Northern Railway, is a despot intelligent and benevolent in the highest degree, few will be found to deny. But he is a despot none the less, and exercises in practice more influence over the lives of the inhabitants of the North-Western States than State and Federal Government put together. In the interest of public welfare and orderly development it may well have been worth taking some risk to prove that in the last resort even the Great Northern must give way before the law of the land. But it is tolerably safe to say that the Northern Securities case will stand alone. The Pennsylvania Railroad, to take but one instance out of very many, controls not one but several competing roads, and overt acts of what in the judgment of the Supreme Court is restraint of trade resulting from that control could, one would think, be proved without much difficulty. But the East is not as the West. The public in the Atlantic States have had sufficient experience of the *bellum omnium contra omnes* in the railway world to have little desire to see the reign of free competition recur. Public opinion would hardly support a prosecution of the Pennsylvania Railroad. Moreover, if such a thing were on other grounds likely to happen, the judgment of Mr. Justice Brewer suggests the probability of the majority in the Supreme Court being converted into a minority. The future must show whether this decision is to be regarded as marking a new departure in the process of the extension of the Federal Government at the expense of the States, or whether the Supreme Court of Washington, like Supreme Courts elsewhere, will tend to distinguish this case hereafter from other cases involving apparently the application of similar principles.

Postscript.—Since the above paper was written further litigation has taken place in the case and has been carried to the Supreme Court. The original judgment decided that the Northern Securities Company must be dissolved, but laid down no principle on which the assets were to be divided. Mr. Hill, representing the Great Northern interests, contended that the whole of the assets should be distributed rateably among all the shareholders; Mr. Harriman, for the Union Pacific, that each party to the pool should be allowed to take out the stock which it had brought in. The former contention prevailed, with the result that the Union Pacific, which brought into the pool a half-share of the Burlington stock and a majority of the Northern Pacific, took out a minority of the stock of each of the three railways. A new financial battle was threatened, but at the time of writing it appears that peace has been made and is likely to be maintained.

THE GREAT JURISTS OF THE WORLD.

V.—FRANCIS BACON.

[*Contributed by* J. E. G. de Montmorency, Esq.]

The world of thought is apt to forget that Francis Bacon, the Master of Laws, was a lawyer. There were many tent-makers before the days of Saul of Tarsus and after, and lawyers were not wanting in England before the days of Lord Verulam of York House, nor have been since. But Paul we remember as an Apostle to the Gentiles, and Bacon as an Apostle to the Schoolmen. Their trades concern us not. Indeed, the fact that Bacon traded in law is one of the tragedies of history. Yet to forget that he was a lawyer is to forget that he was a jurist—a very different matter; and is to overlook the fact that the laws which control the relationships of men are not less fundamental than the laws that express the interaction of particles or the flux of energy. To Bacon, as to another apostle, nothing was unclean or common, except perhaps municipal law, and all that appertained either to things or men were the subject of legitimate curiosity and ordered speculation. His genius was such that had he not adorned a profession he might have rivalled the only playwright who has been more human than Euripides, and might thus have justified, as the very fact almost excuses, a fleeting fancy of to-day. But the law of his nation claimed him as her own by hereditary right, and trained him to expound not only the laws of men, but the laws of Nature.

Sir Nicholas Bacon.—Francis Bacon belonged to a distinguished legal family closely associated with Gray's Inn. His example and that of his famous father, Sir Nicholas Bacon, no doubt in part accounts for the not unremarkable fact that in the sixteenth and subsequent centuries there were in all forty members of the Inn bearing the family name, of whom eight had the prænomen of Francis. Sir Nicholas Bacon was the first professional lawyer who ruled the Court of Chancery. He was perhaps Queen Elizabeth's first legal appointment. In 1558 she made him Lord Keeper of the Great Seal of England, an office that he held until 1578. During his time it was declared by Royal Warrant and Statute that his office was indistinguishable in operation from that of Lord Chancellor. Nicholas Bacon was a great Elizabethan, and his greater son reaped the sterling

benefit of his legal prestige. He was a man of honest, humorous, and humble heart, and he abhorred the dishonesties of his age and his profession. He spoke plainly to the Queen on the scandalous matter of the monopoly licences. "Will you have me speak truth, Madam? *Licentiâ omnes deteriores sumus.* We are all the worse for licence." Despite the greatness of his position, he kept, unlike his less wise son, no state. "My Lord, what a little house have you gotten!" said the Queen to him at Gorhambury. "Madam," he replied, "my house is well, but it is you that have made me too great for my house." A blunt, stern judge, he had little sympathy with the delays and garrulity of his profession. "There is a great difference betwixt you and me," he once said to a verbose pleader: "a pain to me to speak, and a pain to you to hold your peace."

Nicholas Bacon had been Lord Keeper three years when Francis was born in the legal purple on January 22nd, 1561. He was destined, as the Queen prophesied, to achieve the unique distinction of succeeding to the great office that his father held at his birth. At the early age of twelve years he was entered at Trinity College, Cambridge, but he came down in March, 1575-6, having but just completed his fourteenth year. He joined Gray's Inn on June 27th, 1576, and on November 21st of the same year he was given, with his four brothers, out of compliment to his father's office, a position among the Grand Company of the Ancients. He was shortly afterwards sent to Paris to learn diplomacy in its subtlest school, and he remained in France for three years. During this period his father retired, and shortly afterwards, in February, 1578-9, died suddenly. Francis returned at once to England, and resumed his legal studies, taking up his residence in chambers at Gray's Inn that had been granted in 1579 to him and his brother Antony jointly for a term of years which was renewed in 1588. It is evident that the Lord Keeper had made arrangements for his son's return, and had probably designed in his retirement to watch over the student's progress in laws and manners. Bacon's greatest loss in life was the death of his wise father at this critical period. The lessons of the Continental school of diplomacy, with its fluent sophistries, needed to be modified by the slow wisdom of the man to whom it was "a pain to speak."

Gray's Inn: Bacon's Readings.—Bacon never gave up the chambers in Gray's Inn. At a pension of November 8, 1622, after the Lord Chancellor's fall, they were re-granted to him for a term of forty years. He had then retired to this "cell." "Myself for quiet and the better to hold out, am retired to Gray's Inn." In that faithful stronghold disgrace could not touch him, and he could look freely forth upon the walks that he had made and write about the gardens that he loved. These chambers that he occupied for five and forty years were by his will devoted to a pathetic use. He directed them to be sold, and the proceeds, to the extent of £300, to be applied "for some little present relief" of fifteen Cambridge and ten Oxenford scholars. His own bounteous nature looked back

with pain on the narrow means that warped his own professional life. He took up residence in Gray's Inn in 1580, under "a special admittance," that excused him from keeping commons. Late hours, as his mother plaintively pointed out, had rendered his digestion incapable of student's fare. On June 27, 1582, he was called to the Bar, and two years later he entered the Parliament that met on November 23, 1584, as member for Melcombe Regis. He at once plunged into public affairs, and his letter of advice to the Queen of the same year on the treatment of Romanists and ultra-Protestants savoured of wisdom as unerring as it was precocious. In 1586, though he had not yet read, he was made an honorary member of the Reader's Table at Gray's Inn, and in the following year [1] he was elected as one of the Assistant Readers to the Reader Anthony St. Leger. In these two events there is evidence of the mark that he had already made as a studious lawyer. His first Reading dealt with the subject of Advowsons, the text being the fifth chapter of the second Statute of Westminster.[2] The Reading is extant in manuscript, but has not, so far as I am aware, yet been published.

The Stowe Collection was unfortunately closed to Mr. Spedding and Mr. Heath, with the result that it was not possible to obtain a transcript of the unique manuscript of the Reading for the purposes of Mr. Spedding's final edition of Bacon's works. This was a serious loss, for the Reading is the earliest extant of Bacon's legal writings, with the possible exception of *The Discourse upon the Commission of Bridewell*, which was written in 1587, and to which I shall have occasion to refer later as giving a clear view of his early constitutional ideas. It is plain that by this date Bacon had become a deeply read lawyer. Indeed, before this date, in 1586, his merit had been recognised, for in that year he was made a Bencher of his Inn, and thus, in pursuance of a resolution of the Privy Council of February 8, 1584, became qualified to sign pleadings and to

[1] 1587, according to Mr. Heath; but 1588, according to the Gray's Inn Pension Book.

[2] 13 Edw. I. c. 5 (1285) (see *Co. Litt.* 17*b*, 119*b*, 344*b*). This section was enacted to provide a remedy for usurpations of the advowsons of churches. By chapter i. of the Constitutions of Clarendon (1164) all questions relating to advowsons had been removed into the King's Court; but nevertheless the writs available were of little use to reversioners. It was found that heirs under age, reversioners, married women, and religious persons during the vacancies of their holdings frequently suffered the loss of their advowsons through fraudulent presentations to benefices by life tenants and other persons. There were three original writs—one writ of Right (*de recto advocationis*), and two of Possession (*darrien presentment* and *quare impedit*)—but as they provided no sufficient remedy the statute gave the reversioners "such action by writ of Advowson Possessory as the last ancestor of such an heir should have had at the last avoidance happening in his time, being of full age before his death, or before the demise was made for term of life or in fee-tail." Bacon's view on this intricate subject must be valuable. The opinion expressed by Sir Edward Coke, that an infant could present, whatever his age might be—a view also taken by Lord Chancellor King (see 3 *Inst.* 156; *Co. Litt.* 89*a*, note 1)—could have found little favour in Bacon's eyes, save in so far as it negatives the idea of lapse.

plead at Westminster. In the normal course he could not have done so until five years from his call to the Bar. It would appear, then, that Bacon had begun seriously to practise in 1586. In the same year he was elected member for Taunton. In 1589 he sat for Liverpool, and was made Dean of Gray's Inn. A year later he was created Queen's Counsel Extraordinary. In the Parliament of 1593 he sat for Middlesex, and in the following year he was appointed as acting Treasurer of his Inn. All the evidence seems to point towards an active professional and political life. It is said, however, that it was not until 1594 that he first argued in Court. All the evidence is against this suggestion, for not only had he been a Bencher at this date for eight years, and a Queen's Counsel for four, but the class of cases he appeared in were of the first magnitude. It is probable, however, that it was on January 25, 1594, that he made his first striking success in Court—a success sufficient to call forth the approval of Burghley. He increased his reputation as an advocate, we are told, by further arguments on February 5 and 6, 1594. These successes were followed in the Easter Term by the great argument—still elaborately extant—in *Chudleigh's Case*, a cause in which he appeared with Coke. Bacon said of himself, "In weighty causes I always used extraordinary diligence"; and this is certainly confirmed by the arguments extant, all of which show profound learning in case law and immense elaboration. It is absurd to suppose that the author of the argument in *Chudleigh's Case* was unfamiliar with Court work. He indeed at this date considered himself entitled to a Crown officership, and when, despite the influence of Essex, he failed to obtain recognition, he felt that he had received a professional rebuff. Writing to Essex in 1595, he expressed a wish to retire from the legal profession. The want of money was, we may believe, at this time a serious matter. Naturally lavish in his expenditure, and with but small private means, some certainty of income had become a necessity. An application for the Mastership of the Wards failed. In May, 1596, he attempted, without success, to secure the Mastership of the Rolls. A corrupt competitor was appointed. Bacon himself was gradually drawn into the network of corruption that surrounded the whole judicial system. He secured, instead of the Rolls, the reversion of the Clerkship of the Star Chamber, and in 1597 he actually offered this post to the Lord Keeper, Sir Thomas Egerton, for his son, in consideration of the grant of the again vacant Mastership of the Rolls. This singularly unhappy proposal was repeated on November 12, 1597, at the very time that Egerton was acting as a member of a commission appointed to inquire into the corrupt practices of the Master who had secured the office in the place of Bacon in May, 1596.

The Judicial Sale of Offices in the Sixteenth Century.—This affair is important, though it is not mentioned by Lord Macaulay. It throws a vivid light upon the judiciary system of the period, and if we are to be just, as Mr. Macaulay expressed a desire to be in his unjust and melodramatic essay, it is necessary to realise what that system was. The

Chancery Court in the late sixteenth century had become independent of the Privy Council, and the Lord Chancellor was its judge. There had been from early times twelve Masters in Chancery who at this date issued writs of grace, and assisted the Chancellor in the hearing of causes and interlocutory motions. This assistance was necessary in the case of unprofessional chancellors such as Sir Christopher Hatton, who was appointed in 1589. Much work then, as now, was delegated to the Masters,—the taking of accounts and more serious matters. Bacon in his Chancery Orders greatly limited the system of delegation. It was absurd for a demurrer to be argued before a clerk. These Masters were paid, not by salary, but by fees, and were appointed at a price by the Lord Chancellor. Nominally the Crown appointed the chief of the Masters, who was known as the Master of the Rolls; but in practice this office was largely in the gift of the Chancellor. The fact that in the reigns of Elizabeth and James I. these offices were deliberately priced does not perhaps necessarily prove that the officials were corrupt, for the sale appears to have been quite open. But it is beyond doubt that the Masters were subjected to influences that involved corruption. They had to repay themselves out of fees for the price paid, and to increase legal business was to them a necessity of life. The Master of the Rolls had under him the notorious body known as the Six Clerks. These clerks were nominally the solicitors of the parties in every cause, and they in fact kept the records of the causes, and they compelled suitors to have useless copies of the proceedings at huge fees. It was to their interest to encourage litigation and the multiplication of formal documents. It was necessary for the fees to be large, since each of the Six Clerks had eight sworn clerks (which formed the body, known later, when the number in 1668 was increased to ten, as the Sixty Clerks), who were "paid a fixed percentage of the fees paid by suitors to the Six Clerks."[1] In Bacon's time, and before he attained judicial office, the Count of Chancery was not only necessarily corrupt, but also almost irreformable. "The fees were excessive, and the officials who received them were the most determined opponents to effective reform. . . . These officials did their work by deputies, whom they generally underpaid. Their deputies naturally tried to recoup themselves by questionable practices. Sometimes they concealed business from their superiors and kept the fees. . . . Thus, while the actual work was badly done by underpaid deputies, the suitor paid enormous fees to sinecure officials. These officials naturally regarded their offices merely as property. They were sold by the Chancellor or given to his relations. . . . From the Lord Chancellor, who sold the higher offices, to the under-clerk, who did the work of the higher official, all had an interest in maintaining the system. The Court, it was said with some truth, was a 'mere monopolie to cozen the subjects of their monies.'" There was nothing corrupt, as things were

[1] W. S. Holdsworth, *History of English Law*, p. 217.

then understood, in Bacon's scandalous offer to Sir Thomas Egerton. The Lord Keeper had something to sell and Bacon had something to buy with. The legal atmosphere where such a proposal could be made is the thing that makes one wonder. Bacon's conviction in 1622 did nothing to clear the atmosphere, which grew worse and worse. The price of the Mastership went up. In 1688 it was worth a thousand pounds; and when Lord Macclesfield was impeached in 1725 it was worth six times that sum. This scandal was ended with the impeachment; but the Chancery did not improve, and yet in 1816 Lord Eldon saw little that needed change. The best of men in the atmosphere of the Court of Chancery, up till comparatively recent times, had their whole moral nature perverted. It is still possible for a solicitor-trustee to involve an estate in an action against the wish of his clients, and for the sole purpose of incurring costs; but such cases are rare. Yet it is not so long ago since the initiation of such actions by solicitors on the advice of counsel was regarded as legitimate professional enterprise and part of the daily task of otherwise quite blameless men. If Bacon was regarded as an honest man when he made his unsavoury offer in 1597, it is difficult to see why he was other than honest in 1622. The taking of large "expedition fees" and gifts from suitors after the conclusion of suits was not one iota more corrupt than the sale of judicial offices to notoriously unfit persons. It would be absurd to charge Lord Eldon with corruption, but his official life was lived in the midst of abuses which he never lifted a hand to reform. There was hardly a Chancellor from Bacon to Eldon who was not, in a court of conscience, as guilty as Bacon. Indeed, in the mid-eighteenth century "expedition fees" were so well recognised that in 1740 a committee of the House of Commons recommended their abolition. "Hardwicke signed the report. But he introduced no measure of reform. During the latter part of the eighteenth century all projects of reform seem to have been abandoned. No general orders were made by any Chancellor from Hardwicke (1737-57) to Loughborough (1793-1801)." As we shall see, Bacon did attempt to cleanse these Augean stables. That he was abominably soiled in the attempt, no one, and himself the least, denies. But he was, in the eyes of his own age, a political and not a criminal offender. He received his deserts, but not at the hands of justice. In the pathetic "Epistle Dedicatory" to "an advertisement touching an holy war," written after his fall in the year 1622, he compares himself to Demosthenes, Cicero, and Seneca: "all three ruined, not by war, or by any other disaster, but by justice and sentence, as delinquents and criminals; all three famous writers, insomuch as the remembrance of their calamity is now, as to posterity, but as a little picture of night-work, remaining amongst the fair and excellent tables of their acts and works." This—and indeed the whole epistle, with its reference to "mine own country which I have ever loved," fails to strike the note of conscious guilt. Bacon knew

perfectly well that Chancery was pitch, and that it was impossible to touch it without defilement. Again and again he would gladly have given up the law. The opportunity never offered. A man with a profession and nothing else must live by it. He had to reconcile himself to live by the law in the way that the men of his times and for more than two centuries after did live by it—a way certainly not honest, but a way that seemed honester to them than to us who have not their temptations.

The Maxims and the Digest.—It has been necessary to refer somewhat at large to the question of legal corruption at this stage, for it enables us to realise a little more clearly the manner of man that Bacon was and the difficulties of his path. We can now rapidly survey the remainder of his life as a lawyer. Immediately before his second application to Lord Ellesmere, Bacon had taken his seat as member for Southampton in the Parliament that met on October 24, 1597. He did not obtain the Rolls, and pursued his practice at the Bar. But legal projects more important even than practice were at this very period in his mind. The valuable work on the *Maxims of the Law* was composed in 1596-7. It must be read in connection with the principles of a Digest of English Law laid down in the 82nd and subsequent aphorisms in the 8th Book *De Augmentis* (published in 1623), and in the *Proposal for Amending the Laws of England*, and with other attempts to deal with the subject, such as the treatise *de Diversis Regulis Juris*, which he made from time to time henceforth almost to the close of his life. On May 2nd, 1614, Bacon introduced a bill "giving authority to certain commissioners to review the state of the penal laws, to the end that such as are obsolete and snaring may be repealed; and such as are fit to continue, and concern one matter, may be reduced respectively into one clear form of law." This was followed, about June, 1614, by a memorial to the King, asking him to appoint a Commission on the Penal Laws and to codify the Reports that embodied the Common Law, and to restore the system of Official Reporters in order to create an authoritative body of Case Law. The attempts were never perfected. In the Epistle Dedicatory of 1622 he refers to the *De Augmentis Scientiarum*: "I have also entered into a work touching Laws, propounding a character of Justice, in a middle term, between the speculative and reverend discourses of philosophers, and the writings of lawyers which are tied and obnoxious to their particular laws. And although it be true, that I had a purpose to make a particular digest or recompilement of the laws of mine own nation; yet because it is a work of assistance, and that I cannot master by mine own forces and pen, I have laid it aside." The *Maxims of the Law* is all that we have in a finished form of this designed Digest. We may well believe that he had no heart for it after the disastrous events of March, 1522. He preferred to revise his published writings and put into form some of his scientific work. The law was a broken bank. He preferred to invest his "poor talent, or half-talent"

in "banks or mounts of perpetuity which will not break." The *Instauration* was not burdened with recollections of the Chancery.

As the century drew towards its close, Bacon's reputation as a practical lawyer and as an authority on great legal questions drew him into the important causes of the day (such as *Slade's Case* in 1596 and *The Lord Cromwell's Case* in 1601, reported by Coke), and placed him in the front rank of the profession. It is difficult to compare him with his only serious rival, Sir Edward Coke; but there can be little doubt that Bacon welcomed comparison. The Statute of Uses provided the most acute legal controversy of the age. Coke, as Reader at the Inner Temple in 1592, had dealt most successfully with this subject, and he appeared with Bacon in the great *Chudleigh Case* in 1594, when the functions of uses were analysed with all the most refined reasoning that decadent Aristotelianism could provide. Bacon did not hesitate as to his theme when, on November 9, 1599, he was offered the Double Readership at Gray's Inn. He accepted the offer on November 14, and in the Lent Vacation of 1600 he gave his famous reading on the Statute of Uses, which extended over six or possibly nine days. He was certainly not afraid of the precedent set by Coke. He deliberately challenged comparison. In this elaborate study, as in the *Maxims of the Law*, he wished to appear as a lawyer who not only rivalled but outshone the only man, with the possible exception of Croke, who stood in his rank.

On the Coronation Day of James I., Bacon was knighted, and shortly afterwards he married a daughter of Alderman Barnham, who presumably brought money as well as beauty to the now famous lawyer. In 1607 he obtained the long-desired Solicitor-Generalship.

The Case of the Post-Nati and Others.—There are extant certain arguments of law delivered by Bacon whilst Solicitor or Attorney, some corrected by his hand. There were the case of the Post-Nati of Scotland,[1] argued in 1607 in the Exchequer Chamber before the Lord Chancellor and all the judges; the case of the jurisdiction of the Marches, argued in 1604 by Bacon and Sir John Croke on behalf of the Council of the Marches against Coke, who appeared for the King's Bench, and again argued, this time before Coke, in 1608; *Lowe's Case of Tenures* (argued before 1616, in the King's Bench, see 9 Co. 23); *Lady Stanhope's Case of Revocation of Uses* (argued before 1616); the *Case of Impeachment of Waste* (*Lewis Bowle's Case*, 11 Co. 79), decided in 1615; and the *Case de Rege in consulto* (*Brownlow* v. *Michell*), argued in 1615-6.[2] In 1608 Bacon produced

[1] Bacon's speeches in this case, and his speech or papers on *The Union of the Lawes of the Kingdomes of England and Scotland*, were "published by the author's copy and licensed by authority" by Richard Badger in 1641. The *Cases of Treason*, published in the same year, also contained the essay on *The Union of Laws*, though probably a variant in form. The interest taken in the subject at this date was natural.

[2] We may also mention the interesting argument on the subject of Royal Forests in a deer-stealing case before the Star Chamber on October 23rd, 1614. The official

the legal compositions which were published in 1641, under the title of *Cases of Treason*. These writings include the papers known as the *Preparation of the Union of Laws* and the *Answers to the Questions of Sir A. Hay*. In 1614 was published his charge as Attorney-General "touching Duells, upon an information in the Starchamber against Priest and Wright. With the decree of the Star Chamber in the same cause."[1] In 1609 the Solicitor-General was elected Treasurer of Gray's Inn, a position which he held until he became Lord Chancellor in 1617. As Treasurer he laid out the walks and gardens of Gray's Inn, and induced the Bench to spend much money on this laudable object. The Pension Book tells us of the planting of many red roses and of much sweet-briar, while possibly some of the beeches and elms that he planted (at eightpence and tenpence each) survive even to this day. In 1613 Bacon became at last Attorney-General, and on March 11, 1616-7, he received the Great Seal that his father had laid down thirty-eight years before. A little later (1618) he became Lord Chancellor, with the title of Lord Verulam, to which was subsequently added, in 1621, the peerage of St. Albans.

Tothill's Reports.—The only law reports that cover this period are Tothill's. There are sixty-nine decisions in Chancery reported in Tothill between March 11, 1616-7, and May 3, 1621. This would seem a really rich source from which to derive some adequate knowledge of the work of Bacon as a judge. In fact, however, Tothill is a mine of disappointments. There are few of the cases that are at all intelligible as reported, and those that are intelligible often enough suggest erroneous reporting.[2]

charges against Oliver St. John, Owen, Sir John Wentworth, and the Earl and Countess of Somerset in 1615-16 hardly come within the scope of this paper.

[1] This appears to be a very scarce volume. Mr. Spedding reprints it. The copies were "printed for Robert Wilson, and are to be sold at Graies Inn Gate, and in Paules Churchyard at the signe of the Bible, 1614."

[2] It will be convenient, however, to give a list of these cases. The page in Tothill is given after the regnal year. Curious persons may think it worth while to search the Chancery records for further particulars as to these cases. The list is as follows:

Gardiani de Eltham (15 Jac. 7), *Hunt* v. *Bancroft* (14 Jac. & 15 Jac. 146), *Mudget* v. *Davies* (15 Jac. 20), *Middleton's Case* (15 Jac. 32), *B's Case* (Hil. 15 Jac. 47-8), *Stafford* v. *Pasch* (15 Jac. 49), *Watson* v. *Maihne* (Mich. 15 Jac. 101), *Tirwhit's Case* (15 Jac. 110) *Dean and Chapter of Westminster* v. *Eldridge* (15 Jac. 110), *Simeon* v. *Dean of Windsor* (Trin. 15 Jac. 123), *Bayliff* v. *Longworth* (15 Jac. 140) *Holmes* v. *Conway* (15 Jac. 143), *Warcroft* v. *Lord Culpepper* (Mich. 15 Jac. 159), *Pistle* v. *Hardie* (Mich. 15 Jac. 180), *Middleton* v. *Lort* (Mich. 15 Jac. 180), *Wilson* v. *Dunstar* (Mich. 15 Jac. 181), *Garford* v. *Humble* (Mich. 16 Jac. 26), *Moreton* v. *Briggs* (Hil. 16 Jac. 43), *Denis* v. *Carew* (16 Jac. 63), *Wiat* v. *Wiat* (Mich. 16 Jac. 93), *Goodfellow* v. *Morris* (Mich. 16 Jac. 131), *Price* v. *Lloyd* (*circa* 16 Jac. 137), *Austen* v. *Cheney* (Trin. 16 Jac. 138), *Lupton* v. *Harman* vel *Harmon* (Pasche Trin. and Mich. 16 Jac. 139 & 176), *Rowswell* v. *English* (Trin. 16 Jac. 147), *Starkey* v. *Starkey* (Mich. or Hil. 16 Jac. 149), *Harrington* v. *Horton & Cox* (*circa* 16 Jac. 156). *Dimmock* v. *Williams* (Mich. 16 Jac. 159), *Garfield* [vel *Garford*?] v. *Humble* (16 Jac. 159), *Tooker* v. *Mayor of Exeter* (Mich. 16 Jac. 165), *Waller* v. *Waller* (16 Jac. 168), *Freeman* v. *Hugget* (Hil. 16 Jac. 168), *Ancher* v. *Frith* (16 Jac. 176), *Frith* v. *Trion* (16 Jac. 176), *Little* v. *Good* (Trin. 16 Jac. 181), *Arleston* v. *Kent* (Feb. 17

The only further legal works with which Bacon was connected that need be referred to here[1] are the *Ordinances in Chancery*. It is certain that a considerable number, and it is probable that a good many, of these Ordinances were his own, were his attempt to cleanse the Chancery.

Bacon as a Jurist: an Appreciation.—We have now named in chronological order the various legal works that Bacon left to the world, and have indicated so far as was necessary the main facts of his life as a lawyer. The general impression left upon the mind by a perusal of the disordered fragments and arguments that constitute his contribution to the history of law and by an observation of his legal career is one of disappointment. His massive intellect and subtle mind appear at first never to have been persistently applied to, though they often approached and dallied with, the great problems of jurisprudence. One is tempted to imagine that he never repaid to the law of England the debt which he owed to it. He was a great advocate and a great pleader, we say, "great, even as a lawyer," to use Lord Coleridge's critical phrase, but there is no evidence to show that he was a great judge, and little evidence to prove that he was a great jurist. That is the way in which a perusal of the professional works inevitably at first strikes the reader. He lived by the law, but the law did not live by him. A second and third reading leave a different impression. We realise that it is greatly due to the fragmentary character of the legal remains that this somewhat sordid impression arises. Bacon did in fact live by the law, and was on the whole careless as to the literary merit of his legal writings. When he thought that such writings were likely to advance him, he was at times, as in the case of the Four Arguments of Law, more careful. But not always. We have but a disordered fragment of his famous Double Reading on the Statute of Uses. We ought, if Bacon is a great jurist, to be able to disregard the disordered condition of his legal writings, and to find therein an essential orderliness and dry luminosity of thought calculated to give life to the law he lived by. The more closely Bacon's legal works are studied the

Jac. 27), *Hansly* v. *Hansly* (Trin. 17 Jac. 93), *Anon: Case* (17 Jac. 94), *Cartwright* v. *Drope* (Mich. 17 Jac. 110), *Barkley* v. *Pierson* (Trin. 17 Jac. 113), *Tiffin* v. *Tiffin* (Hil. 17 Jac. 113), *Finch* v. *Hicks* (Hil. or Pasch. 17 Jac. 113), *Shapcot* v. *Dowrish* (Trin. 17 Jac. 138), *Hooe* v. *Arnold* (*circa* 17 Jac. 146), *Morgan* v. *Richardson* (Hil. 17 (?) 18 Jac. 154), *Banister* v. *Brooke* (Mich. 17 Jac. 158), *Lord Pembroke* v. *Eyre* (17 Jac. 158), *Thornburgh* v. *Grobham* (*circa* 17 Jac. 161), *Huet* v. *Hurston* (17 Jac. 168), *Hoskets* v. *Hillier* (Pasche 17 Jac. 169), *Roane* v. *Stepney* (17 or 18 Jac. 176), *Prentice* v. *Roupe* (17 Jac. 176), *Eardley* v. *Eltonhead* (17 (? 15) Jac. 177), *Overman* v. *Wright* (Hil. 17 Jac. 177) *Newton* v. *Price* (Pasche 17 Jac. 180), *Bourne* v. *Ironmonger* (Mich. 17 Jac. 181), *Peacock* v. *Reynell* (June 17 Jac. 186), *Hunt* v. *Youngman* (17 Jac. 187), *Long* v. *Long* (Hil. 17 (?) Jac. 190), *Posthumus Hobbie* v. *Smith* (18 Jac. 11), *Sacheverell* v. *Sacheverell* (18 Jac. 38) *Nelson* v. *Yelverton* (18 Jac. 39-40), *Grant* v. *Edes* (18 Jac. 42), *Harris* v. *Beadle* (Hil. 18 Jac. 73), *Dom Crispe* (Pasche or Trin. 18 Jac. 94), *Long* v. *Long* (18 Jac. 169), *Cottle* v. *Brooke* (Pasche 18 Jac. 176), *Underhill* v. *Joyner* (18 Jac. 184-5).

[1] The *Use of the Law* attributed to him is certainly an apocryphal treatise.

more certain it becomes that this is the case, and the reader is more and more tempted to regret that his legal conceptions have been so rarely pursued and so generally disregarded. It will be useful briefly to consider the works in their chronological order.

The Commission of Bridewell.—The *Brief Discourse upon the Commission of Bridewell* was written in 1587, when Bacon was twenty-six years of age. It is in many ways a remarkable paper, showing an extraordinary knowledge of Statute and Case Law bearing upon constitutional questions. It is an argument against the legality of a charter granted to the city of London by the Crown, empowering the Governor of Bridewell to arrest, imprison, and punish evil characters in the city at his discretion. Bacon lays down the proposition that 'a King's grant either repugnant to law, custom, or statute is not good nor pleadable in the law,' and establishes it with abundant reference to the Statute Book and the Year Books. He then goes on to say, "Yet do not we see daily in experience that whatsoever can be procured under the Great Seal of England is taken *quasi sanctum*; and although it be merely against the laws, customs, and statutes of this realm, yet it is defended in such sort, that some have been called rebellious for not allowing such void and unlawful grants." Here, in no mincing language, was laid down the constitutional position that it was to be the special privilege of the seventeenth century to redeem. Bacon from first to last had no doubt of the limitations of the Crown, though when he held the Seal he dared not rebuke licence in high places, as his father had done. The weakness of the mother who excused Francis from the frugal commons of Gray's Inn played its fatal part in his character. But Bacon, if we may believe Tothill's report in *Sir Thomas Middleton's Case*,[1] was no favourer of corruption on the part of Crown officials. In that case the master and mariners of a government vessel agreed that a rateable proportion should be deducted from their wages for the relief of such of the crew as should be maimed at sea. Sir Thomas Middleton, the Treasurer for the Navy in 1590, at the end of the voyage paid the wages, but detained the rateable proportion that had been agreed to be deducted for the relief of the maimed seafaring men. The detention was made despite the fact that there were no members of the crew who had a right to claim the deduction. Bacon held that the Treasurer for the Navy must account to the crew for this money. He refused, in fact, to recognise that a Government department was above the law or could override either a contract or the ordinary principles of equity. The case is both interesting and important, and apparently shows that Bacon was entirely proof against the influence that would naturally at that date have been brought to bear upon him in such a case. The cause, moreover, proves that throughout his career he refused to recognise any unconstitutional claims of the Crown. It is also an instance of the delay of justice that blotted the Chancery of England. Bacon's decision was given about thirty years after the cause of action arose.

[1] p. 32, 15 Jac.

The King's Prerogative.—*The Cases of the King's Prerogative*, which Bacon adopted, if he did not actually compile, in 1608, admirably summarises the prerogatival power, in matters relating to Parliament, to the persons of the King's subjects, to war and peace, money, trade, and traffic. There is no word in this terse code that clashes with Bacon's views expressed in the matter of the Bridewell Charter, in 1587, or in the Seafarer's Wages' Case in 1618. The *Preparation for the Union of Laws*, which was for the most part printed in *Cases of Treason* in 1641, and also in a volume of speeches published in the same year, is undoubtedly from Bacon's hand, and belongs, with its remarkable preface, to the year 1608. No word in this criminal code or its preface modifies the constitutional position that Bacon from the first held. In the preface he specially points out that the King has of himself no power of codifying existing laws or of bringing the laws of England and Scotland into conformity, but that he can deal with administrative questions, such as the rearrangement of circuits and of the method of issuing commissions of peace.

The next work that requires some notice is the *Maxims of the Law*, composed when Bacon was thirty-five years of age.[1] It was dedicated to "Her Most Sacred Majesty"; to the Queen who never forgave his early protest in Parliament against illegal and unconstitutional subsidies, a protest the spirit of which (despite Macaulay's view) never fails in all Bacon's constitutional writings. The dedication, if stripped of its fine flowers of bitterness—"for if your government be considered in all the parts it is incomparable"—is an unflinching indictment of the evils of a system that Bacon himself was destined to administer, and a passionate plea for reform. He says:

"Your Majesty's reign having been blest from the Highest with inward peace, and falling into an age wherein, if science be increased, conscience is rather decayed; and if men's wits be great, their wills be more great; and wherein also laws are multiplied in number, and slackened in vigour and execution; it was not possible but that not only suits in law should multiply and increase, whereof always a great part are unjust, but also that all the indirect and sinister courses and practices to abuse law and justice should have been much attempted and put in ure: which no doubt had bred greater enormities, had they not, by the royal policy of your Majesty, by the censure and foresight of your Council table and Star-Chamber, and by the gravity and integrity of your Benches, been repressed and refrained: for it may be freely observed, that, as concerning frauds in contracts, bargains, and assurances, and abuses of laws by delays, covins, vexations, and corruptions in informers, jurors, ministers of justice, and the like, there have been sundry excellent statutes made in your Majesty's time, more in number, and more politic in provision, than in any of your Majesty's predecessors' times."

[1] The argument in *Chudleigh's Case* was composed two years earlier, but that should be read with the Reading of 1600.

The Plea for Codification.—Codification of the laws, he feels, is the only remedy for the many evils, and draws hope from the Queen's speech of 1593 of "a general amendment of the state of your laws, and to reduce them to more brevity and certainty; that the great hollowness and unsafety in assurances of lands and goods may be strengthened; the snaring penalties that lie upon many subjects removed; the execution of many profitable laws revived; the judge better directed in his sentence; the counsellor better warranted in his counsel; the student eased in his reading; the contentious suitor that seeketh but vexation disarmed; and the honest suitor that seeketh but to obtain his right relieved."

Perhaps the need for codification and the results springing from it have never been put so forcibly and happily before or since. Bacon, indeed, hoped much from the personal influence of the Queen, and believed, too, in the strengthening of the Crown that would result from a strengthening of the laws. The relationship of the Crown and the laws, not in their creation, but in their operation, was a note that he never tired of striking. In his pamphlet[1] on the murder of Sir John Tyndale by Bertram—not printed by Spedding—he says: "The law is a dumb king, the King a speaking law. All subordinate judges are but organ-pipes, to sound forth such notes of concord as the King sets to keep his kingdoms in tune; so that if any one jar, no subject is to take upon him to mend or correct, but to tell the fault to him, who is the chief master of that music, and to let his ears distinguish the tunes." Beside this statement should be placed the picture of a perfect judge as drawn by Bacon in his famous essay on *Judicature*. He could not do the things that he would.

The Maxims of the Law.—The *Maxims of the Law* are Bacon's contribution to the perfect organ of law upon which he wished the King to play and produce perfect harmony. The Epistle Dedicatory and the Preface throw no mean light on the question of codification. He recalled Elizabeth's mind to the triumphs of Augustus Cæsar:

Pace data terris, animum ad civilia vertit
Jura suum; legesque tulet justissimus auctor.

He reminded her of Justinian, whose pride it was "to revisit the Roman laws, and to reduce them from infinite volumes and much repugnancy into one competent and uniform corps of law." He pointed out that the time of peace is the time of reform, since peace produces "abundance of wealth and fineness of cunning . . . multitude of suits and controversies, and abuses of laws by evasions and devices." He felt called to aid in the work of reform, for "I hold every man a debtor to his profession; from the which, as men of course do seek to receive countenance and profit, so ought they of duty to endeavour themselves, by way of amends, to be a help and ornament thereunto. This is performed in some degree by the honest

[1] As to authorship see *Acta Cancellariæ*, pp. 236-8, and *Lord Bacon's Works*, vol. xiii. pp. 106, 115.

and liberal practice of a profession, when men shall carry a respect not to descend into any course that is corrupt and unworthy thereof, and preserve themselves free from the abuses wherewith the same profession is noted to be infected; but much more is this performed if a man be able to visit and strengthen the roots and foundations of the science itself; thereby not only gracing it in reputation and dignity, but also amplifying it in perfection and substance." It is a pathetic statement of an ideal, a confession of a high faith, that Bacon, if history be true, deliberately abandoned. It tempts the reader to believe that there is some mystery yet unsolved behind the corruption of Lord St. Albans. In face of the evidence it seems, however, impossible to suggest that that corruption was the work of his clerks by which he never benefited, but for which he was morally and legally responsible.

In his preface he goes on to declare that from the first his object had been that the laws should be the better by his industry, and that that object would be best attained "by collecting the rules and grounds dispersed throughout the body of the same laws," and so abolish the great evil of English law—its uncertainty—and correct its "unprofitable subtlety." He felt it would have been possible to have digested "these rules into a certain method, or order, which, I know, would have been more admired, as that which would have made every particular rule, through his coherence and relation into other rules, seem more cunning and more deep." This suggestion is in itself one that is of immense value. He conceived the upbuilding of a coherent organic code of law out of the heterogeneous materials that lay to hand on every side. He specifically affirms the possibility of creating such a code, and the conception was one that could only spring from a great jurist. He apologises for not undertaking the work. He desired merely to produce a code of immediate usefulness. He aimed at "a work without any glory of affected novelty, or of method, or of language, or of quotations and authorities, dedicated only to use, and submitted only to the censure of the learned, and chiefly of time." Bacon never produced the work that he designed. The *Maxims of the Law* are, so to speak, a sample of the work. When he became Attorney-General he was again labouring at it, and he actually issued his *Proposal for Amending the Laws of England*. Later still, in the *De Augmentis Scientiarum*, he is still thinking the work out. But it never attained form. We have fragments and suggestions all of great worth, and teeming with the wealth of ideas. But we have no code that could be submitted to "the censure of time." He realised that the actual working out of a digest of the laws of England could not be undertaken by one hand. The lapse of three centuries leaves his conception still in the main unrealised. In 1605 it could easily have been realised, but in 1905 we have the Justinianean task many times magnified before us. Bacon's fragment, the *Maxims of the Law*, does not call for analysis here. No one but a profound lawyer could have produced it, and it may be read with

profit by the practising lawyer at the present hour.[1] However, this is not the place in which to deal with the *Maxims* in detail. The point of value is that Bacon, in an age of subtle prolixity, advocated the codification of the law, and demonstrated by experiment its possibility.

Chudleigh's Case: The Statute of Uses.—Some further reference must be made to *Chudleigh's Case* of 1594 and the Reading on the *Statute of Uses* of 1600. *Chudleigh's Case* raised the following point: A infeoffed certain persons of the land in question to the use of A and the heirs of his body, with remainder to the use of the feoffees and their heirs during the life of A's eldest son B, with remainder in tail to B's male issue, with remainder to A's other sons then living *nominatim* in succession, with remainder to A's right heirs in fee. A died in the lifetime of the feoffees, who infeoffed B in fee to the exclusion of the subsequent remaindermen. B had issue two sons, S and John, who possessed contingent uses so excluded. B infeoffed a stranger C, who infeoffed another stranger D; S died without issue, and after B's death, his younger son John entered and granted a lease to Freine, the plaintiff in the action. Dillon, the representative of D, re-entered on Freine, who thereupon brought an action of trespass. Bacon and Coke were instructed to argue that as there was no estate left on the feoffees at the time when John's estate would have fallen into possession, his interest had gone. The action for trespass was dismissed by the majority of the judges in the Exchequer Chamber on the ground that where future uses are not vested they can only be executed when they arise if the feoffees possess a right to enter in pursuance of a *scintilla juris et tituli* or vestige of estate remaining in them. Chudleigh's feoffees had parted with their *scintilla*, and therefore John Chudleigh had no estate. Bacon, in his elaborate and weighty argument, urged the doctrine of the *scintilla juris*, as in duty bound; but he lost no opportunity to scoff at the argument of Coke, the prime supporter of the doctrine. On the subject of this doctrine he says, "And for that which has been objected, that the use is in the keeping of the law, and that nothing is in the feoffees; it is true that the use is preserved by the law, but not executed by the statute before the time. And therefore it appears, by evident demonstration, that an interest remains in the feoffees. A fee simple absolute is passed to the feoffees in possession, only a fee simple defeasable is executed by the statute, as is proved: if then the lesser estate be subtracted and deducted out of the greater, it is of necessity that a surplusage remains.[2] . . .

[1] The modern lawyer will, however, refuse to concede some of the propositions. The fifth maxim, *Necessitas inducit privilegium quoad jura privata*, carries the doctrine of necessity beyond our presents limits. "First of conservation of life: If a man steal viands to satisfy his present hunger, this is no felony nor larceny." Staundford is quoted in support of this proposition. Bacon, under the same heading, deals with the question to which Sir James Stephen refers of two men clinging to a plank capable of supporting only one. Bacon declares that it is lawful for one to thrust the other away. Stephen declares the act not punishable (but see *R.* v. *Dudley and Stephens*, 14 Q.B.D. at pp. 285-6).

[2] He previously quotes Dyer on the point, "Adhuc remanet quaedam scintilla juris

This is the medium between the two estates; and if the first *cestui que use* be disseised and continue disseised, and the limitation comes in use, the first use ceases, and the second cannot rise by reason of the removing of the possession out of privity. And so the feoffees come to have right, and can enter or bring their writ of right; but after they have re-entered or recovered, the use now takes the possession from them. But in our case the feoffees are disabled by their own feoffment." The doctrine of the *scintilla juris et tituli* could hardly be put higher. Bacon was quite capable of playing the Neo-Aristotelians with their own weapons. But he did not for a moment accept his own argument. He was personally satisfied to establish what *Chudleigh's Case* in the long run only did establish, the common law control over statutory uses that could take effect as common law uses. In his arguments this case and *Lady Stanhope's Case* on the revocation of uses, it is clear that he did not recognise the existence of statutory uses rendered indefeasible by that very fact of their independence of the common law. To him the statute of Henry VIII. "alters not the law as to raising of uses, but only to draw the possession after them. Wherefore if a contingent use could not rise at common law if the possession of the feoffees was estranged without regress, so no more can it at this day: for the statute leaves all questions of rising of an use merely to the common law, and makes no alteration." The statute must not be bent to meet the equity of the case. In *Chudleigh's Case* he told the Court bluntly: "For, as you, my lords judges, better know, so, with modesty, I may put it in your remembrance, that your authority over the laws and statutes of this realm is not such as the Papists affirm the Church to have over the Scriptures, to make them a shipman's hose or nose of wax; but such as we say the Church has over them, *scil*, to expound them faithfully and apply them properly."[1] His argument may well be memorable for such a pronouncement as this, which illustrates his entire position as a constitutional jurist. But the Reading seems to show his recognition of the fact that the statute did create a new type of use that could take effect without the aid of the common law, though he does not analyse the distinction between the two types of limitations. His main point is that a use is a species of property moulded by its creator, and not a mere metaphysical imitation of a real possession. "A conveyance in use is nothing but a publication of the trust." He will have no metaphysical imagining in an operative law. Realities are the only things that matter. "The conceit of *scintilla juris*" must disappear with the Lincoln's Inn subtlety of "imitation of possession" "The statute . . . succeeds in office to the feoffees," and it is the illogical will of

et tituli, quasi medium quid inter utrosque status. Which words are very significant. For the most proper sense is that, if two uses be limited, one to determine and the other to commence, between the cesser of the one and the rising of the other, the feoffees (who are vessels, as Mr. Atkinson terms them) receive the land from the one *cestui que use* and deliver it to the other, and have a right, in the sight of the law, between the two."

[1] See also the Essay on Judicature.

Parliament, and not a logical spark of title dwelling *in gremio legis* or in the heavens, that keeps intact each tenuous remainder. Coke and Bacon both argued in *Chudleigh's Case*, and both read on the Statute of Uses; but it was Bacon only who realised that it was necessary finally to abolish the relationship of scholasticism and law. Bacon declines in his Reading "to stir conceits and subtle doubts, or to contrive a multitude of tedious and intricate cases, whereof all, saving one, are buried, and the greater part of that one case which is taken is commonly nothing to the matter in hand. But my labour shall be in the ancient course, to open the law upon doubts, and not to open doubts upon the law." It was his function, in fact, finally to extinguish the *scintilla juris* in the grave that he digged for the Schoolmen.[1]

Some space must be devoted—much ought to be devoted—to other great arguments. The case of the Post-Nati of Scotland (*Calvin's Case*) was, as Bacon told the Court, "of exceeding great consequence." The question was whether natives of England or Scotland were or were not naturalised in both kingdoms after the accession of James. The Commissioners of Union in 1605 had advised in favour of the double naturalisation; and in view of the attitude of the Commons, the matter was fully discussed by a hybrid committee of the two Houses on February 25, 1606-7. The next day ten judges against one advised the Lords in favour of the Post-Nati, thus confirming the view indicated before the committee by Lord Ellesmere. The Commons, however, refused to pass a declaratory Act, and consequently the Crown arranged the hearing of a specific case dealing with the question before the Easter term of the following year. Bacon argued for the Post-Nati, and his view was adopted by the Lord Chancellor and thirteen judges. Foster and Walmsley were the sole dissentients. Bacon's argument is very elaborate, and is professedly based upon "the foundations and fountains of reason." Was naturalisation accessory to sovereignty, which in this case was joint, or to the legislature which was several, was "the depth of this question." He appealed to a Schoolman's edition of Aristotle to prove that a monarchy is the natural state of government—"from the Monarch of heaven and earth to the king, if you will, in an hive of bees": "other states are the creatures of law." This appeal to the law of nature, which had long unconsciously been moulding the juristic systems of Europe, in such a case is as remarkable as it was ingenious. But it required immediate modification. Bracton is quoted: *Lex facit quod ipse est Rex.* Moreover, "his acts and grants are limited by law, and we argue them every day. But I demand, Do these offices or operations of law evacuate or frustrate the original submission, which

[1] In fact the *scintilla juris* flickered up and down Lincoln's Inn until the passing of Lord St. Leonard's Act, 1860 (23 & 24 Vict., c. 38, s. 7), which specifically declared that no "*seisin to uses* or *scintilla juris*" should "be deemed necessary for the support of or to give effect to future or contingent or executory uses."

was natural? Or shall it be said that all allegiance is by law?" In a fine passage he declares that this is not so. "No man will affirm that the obedience of the child is by law, though laws in some points do make it more positive: and even so it is of allegiance of subjects to hereditary monarchs, which is corroborated and confirmed by law, but is the work of the law of nature." Then in a fine legal frenzy he confirmed his argument by adducing the parliamentary title, Our *natural* sovereign and liege lord, flung in the face of the judges the saying of one of them that he would never allow that Elizabeth "should be a statute Queen, but a common-law Queen," and concluded with a further reference to "*Our natural liege sovereign*; as Acts of Parliament speak: for as the common law is more worthy than the statute law; so the law of nature is more worthy than them both." Some such speech as this it must have been to which Ben Jonson listened: "the fear of every man that heard him was lest he should make an end."

The Law of Nature.—The value that Bacon attached to the law of nature, to "Natural equity," is significant of his position as a jurist and of the general tendency of legal thought. "Our law is grounded upon the law of nature," he declares in a later part of the argument. "For, my lords, by the law of nature all men in the world are naturalised one towards another. They were all made of one lump of earth, one breath of God. . . . It was civil and national laws that brought in these words, and differences, of *civis* and *exterus*, alien and native. And therefore because they tend to abridge the law of nature, the law favoureth not them, but takes them strictly. . . . All national laws whatsoever are to be taken strictly and hardly in any point wherein they abridge and derogate from the law of nature. . . . Furthermore, as the law of England must favour naturalisation as a branch of the law of nature, so it appears manifestly, that it doth favour it accordingly. . . . In such sort doth the law of England open her lap to receive in people to be naturalised; which indeed showeth the wisdom and excellent composition of our law, and that it is the law of a warlike and a magnanimous nation fit for empire."

In this argument Bacon achieved a remarkable feat—the reconciliation to his own satisfaction of the allegiance of the subject to the King with the allegiance of the King to the law. The right divine of kings to govern right was really the conclusion achieved. So long as the King governed according to law, no one would question the divinity of his origin or the Trinitarian metaphysic of Mr. Plowden (borrowed, one would think, at the same time as the Schoolman's Aristotle, with a gleam of humour by the author of the *Novum Organum*), with respect to the dual personality of the King. This part of the argument was of great importance in the history of the development of English law, for it shows how the doctrine of natural law had developed since the date when the *Doctor and Student* had been written a century before. But the sting of the great argument was in its tail. The

union of the two kingdoms was a necessity: *si inseparabiles insuperabiles*. The law of nature admits no competitors when it becomes the law of necessity. Francis Bacon was born a generation too soon. His force as a constitutional thinker, combined with his great powers in debate, would have gone far to solve problems already in his time ripening in the sunlight of public opinion. Common law monarchy might still be with us had Bacon and not Strafford advised Charles Stuart.

Bacon's influence as a constitutional lawyer did not abate. His famous argument on the writ *de non precedendo rege inconsulto* (*Brownlow* v. *Michell*), delivered immediately before he received the Great Seal, was a forensic triumph. He spoke for two hours and a half, and "lost not one auditor that was present at the beginning." Queen Elizabeth had attempted to create a new office in connection with the grant of patents. The judges refused to admit the nominee on the ground that it infringed Magna Carta, and the Queen yielded. James renewed the attempt, and appointed one Michel to the office. Brownlow, the Prothonotary, claimed the fees under an assize, and thereby questioned the right of the Crown to create the office. Bacon appeared for the Crown, and Coke, his ancient adversary, declared that he presented "a famous argument." The wisdom of the speech is undeniable. The old constitutional position is maintained. The advocate laughs to scorn the suggestion that the writ *de non precedendo* which he had presented is "a work of absolute power, or a strain of the prerogative, or shocking of justice, or infinite delay." The only question for the judges is a question of procedure; to wit, whether the King's constitutional right is to be tested in the King's Bench or in Chancery. The King has a right to be a party when his prerogative is questioned, and none can doubt that it is questioned here. "The King shall have choice of his Courts upon his demand; much more shall he have it upon his defence." The Court must know "how sharp-sighted the law of England is on the King's behalf to preserve his right from loss." All loss to the King is fetched in by this writ. "Now to say that the King cannot grant or erect any office *de novo*, no man, I think, will be such a plebeian (I mean both in science and honour) as so to affirm; I will cite no books for it; you have the book of time, which is the best book, and perpetual practice." The holder of the office will have by this writ the protection of the King. "Therefore I will end with this to your lordship and the rest, that *obedience is better than sacrifice*; that is a voluntary thing, and it is many times a glory or fame; but obedience is ever acceptable." With which half-threat the Attorney-General hies him away to the King, to induce him, "because the times were as they were," to command the Chief Justice to suspend the proceedings. This was done. Had Charles possessed such an adviser, he too might have learnt that "the times were as they were," and have kept within those constitutional limits of the Crown that Bacon in his most strenuous and brilliant advocacy was always careful never to overstep. This fact, did space permit, might further

be illustrated by the famous and elaborate argument in the case of *The Jurisdiction of the Marches*. Bacon's cautious constitutional position may be also observed by his attitude in the proceedings that led up to this case. The King would not extend or withdraw the Royal Prerogative as an object of legal attack save "by the advice of the three estates in Parliament."

Bacon and the Court of Chancery.—The work of Bacon as a judge forms a chapter of the history of law as yet unwritten in detail or indeed at all adequately. That he made his mark in the Court of Chancery is, however, not to be doubted, brief though his rule was and disastrous its end. It is almost impossible to deal with the decisions as set out in Tothill, but some reference must be made to some of them. In *Arleston* v. *Kent* bonds entered into for procuring a marriage were cancelled. In *Sir Thomas Middleton's Case* a Government department was compelled to account. In *Sacheverell* v. *Sacheverell* a member of a Commission of Rebellion who had allowed a prisoner to escape was committed to prison until such time as the prisoner was brought in. In *Grant* v. *Edes* the plaintiff made a conveyance to feoffees in trust to the use of his infant sons, with several remainders over. The Court enabled him to sell the settled lands to pay debts contracted after the date of the settlement. In *Moreton* v. *Briggs* it was held that want of livery could not avoid a conveyance. In *Goodfellow* v. *Morris* the mistake of a name in a conveyance was rectified, and the lands assured according to the intention of the conveying party. In *Morgan* v. *Richardson* the plaintiff, although protected by a writ of privilege, had been arrested. He was freed by *Habeas Corpus*, and his arrestor committed. In *Huet* v. *Hurston* it was held that there was no relief after judgment. In *Long* v. *Long* (C. Hil. 17 Tac.) it was held that a witness once examined may be recalled. Lord Ellesmere had decided the other way.

When we turn to the *Ordinances in Chancery* issued by Bacon, we find that his Hundred Rules of Court finally fixed practice in Chancery, and made the Court of Chancery a definite court of justice under ordered governance, and not a mere court of conscience dealing out an erratic measure of equity in graciously disordered fashion. To what extent the Hundred Rules were from Bacon's hand it is perhaps not altogether easy to tell. It is probable that he codified the existing practice, which had been reduced to order by Lord Ellesmere, and brought into an organic form by the aid of many additions the scattered orders that existed before his time. It is natural to suppose that this would be done by a man so imbued with the idea of codification as was Bacon. The Rules as we have them show the stamp of a mind that could store great matter in a little room, and could provide future ages with a pattern of practice which, as laid up in the Lord Chancellor's mind, and as exhibited in his Hundred Ordinances, was the direct ancestor of those Rules of the Supreme Court that to-day are hidden in the arid wastes of the Annual Practice. It is no mean title to juridical fame finally to have

settled the procedure in equity for the Anglo-Saxon race.[1] In this alone we see a feat that would justify a claim to greatness. But when we regard his Century of Orders, as we must regard them, merely as crumbs from the feast of law and reason which Francis Bacon offered to the world, we can to some extent realise how great a jurist was this great Englishman. He regarded human law as the sister of physical law. In studying the latter he had in contemplation "the general good of men in their very being, and the dowries of nature," and in the former "the general good of men likewise in society, and the dowries of Government." The two were related by that Law of Nature which he expounded in *Calvin's Case.* A universal rule of law for men and things was the ultimate concept of the man who took all law for his province, and believed in the natural equity that pervades creation.

VI.—LEIBNITZ.

[*Contributed by* Sir John Macdonell, C.B.]

Leibnitz as a Jurist.—It is only right that Leibnitz should be included among "The Great Jurists of the World." It was he who first suggested a series of lives of the chief jurists as one of the *desiderata* of legal literature; and for many reasons he is here fitly named. Leibnitz, who originated so much, who struck out more new paths than his own generation was aware of, who is one of the half-dozen great names in philosophy, who developed mathematics along new lines, and who was an innovator in logic, philology, history, and many other regions of science, may be considered one of the chief founders of modern jurisprudence. He was truly, if any one ever was, in Du Bois Reymond's phrase, "All-und-Ganzwisser." He is now chiefly looked upon as a mathematician, a logician, and a metaphysician. His philosophical works receive increasing attention. Such is the trend of modern speculation that note is taken more and more of ideas which he first developed. Inquiries as to the ultimate constitution of matter and the nature of energy revolve round ideas which he struck out. It is possible that there will be, sooner or later, a revival of interest in his conceptions of jurisprudence and in his legal works. It may be doubted whether even in his own country full justice is done to his activity in jurisprudence, its extent and originality. He sat freely to all the ideas of his own time; he looked beyond its necessities; he had conceptions of law in many ways nearer to those of our age than those of his own. One cannot read his legal works—and the same is more impressively true of his letters—without marvelling at the richness, variety, and novelty of his suggestions, scattered with prodigality; suggestions often left incomplete and indefinite; but even, if mere hints or surmises, more valuable than the laboured performances of mediocre minds.

[1] Cf. *Ordines Cancellariæ* (London, 1698) with the *Ordinances in Chancery.*

One point I would emphasise: he was no amateur or dilettante in law, no theoretical reformer knowing it only from books. In his lifetime he published little on the subject of philosophy: *Les Nouveaux Essais sur l'Entendement Humain* did not see the light until some fifty years after his death; but he was well known to his contemporaries as a copious writer on law. When a mere youth he published his *Nova Methodus discendæ docendæque Jurisprudentiæ*—a tract full of comprehensive suggestions, but marked also by that sobriety of judgment which distinguished his legal writings. "I have been a jurist from my youth, and in more than one Court; and jurisprudence forms part of practical philosophy." When still young he wrote a tract entitled *Specimen Difficultatis in jure, seu Quæstiones philosophicæ amæniores, ex Jure collectæ*; and he was always turning aside to jurisprudence. He belonged to a family of lawyers. His grandfather on the mother's side was editor of a synopsis of canon and criminal law. Of himself he writes: "ad jus, ut ita dicam, necessitudine rapiebatur." He had studied it practically and theoretically and at one time with almost feverish zeal. "When I had resolved upon the study of law, I put aside everything else for it." If there was one study to which his ubiquitous curiosity was constant, it was jurisprudence. It was, if any was, his *Berufswissenschaft*. Leibnitz, unlike Bacon, was not an advocate. Indeed he probably never thought of practising as such: "judicis munere delectabar; advocatorum aversabar." At the age of twenty-four he was appointed a member of the Court of Appeal of Mainz. He had also, as Hofrath in Hanover, no small practical experience of legal work. For some seventeen years after his return from Jena he immersed himself in jurisprudence. He composed *Processakten*, and did this technical work with great skill.[1] Towards the end of his life, when he was in the service of the reigning House of Brunswick, he was often called away from mathematical and philosophical studies to deal with legal questions of interest to his patrons.

Whether he was successful as a judge, I do not know. But, if I may surmise from his writings, he had the saving good sense which makes learning a help instead of an impediment to a right decision. His earliest writings are on law. His legal works altogether are of great extent; they occupy about two-thirds of the fourth volume of Dutens' edition of his works. Further fragments have been brought to light; and we are assured by those who have examined the Leibnitz manuscripts at Hanover that many treasures relating to law have still to be published.[2] For years enquirers have been digging in this quarry, and it is not exhausted.

[1] Kuno Fischer 2, 66.

[2] See *Rechtsphilosophisches aus Leibnitzens ungedruckten Schriften von Dr. George Mollat* (1885). In some of his letters we get a glimpse of the prodigious variety of his labours (*e.g.* Dutens 6, 29); the range of reading disclosed in the correspondence is amazing. No wonder that he writes: "*Quam mirifice distractus sum, dici non potest.*" Couturat. *La Logique de Leibnitz*, p. 574.

Very often he has been reproached for scattering his energies over many fields. I am not able to judge how far this marred his work in mathematical and physical science, or in philosophy. But this diversity of occupations and interests, this dissipation of energies, brought compensations. He gained in the sense of unity; he saw things as a whole, their relations and interaction; he escaped the vices due to minute specialising which Comte deplored and which have not diminished; he used the light of one science to illuminate another; he found in one domain materials sorely needed elsewhere; the axioms recognised in one region proved useful imported novelties in another. He is pleading for himself—he is protesting against a fallacy old and enduring, and unjust to versatile minds—when he says, "Les combinaisons des choses qui paraissent éloignées servent souvent à produire des effects extraordinaires, et c'est encore les raisons pourquoy ceux qui se bornent à une seule recherche manquent souvent de faire des découvertes qu'un esprit plus éténdu, qui peut joindre d'autres sciences à celles dont il s'agit, découvre sans peine."[1]

At all events, to jurisprudence he was constant. In many ways, and in some which need not here be adverted to, he recalls Bacon. In extent his legal writings probably surpass those of the great Englishman; and, so far as I am able to judge, the discussion of legal points occupies far more of his letters than do similar topics in Bacon's.

The impression to be got from reading Leibnitz's legal tracts is all in favour of his practical sagacity. No pedant, or admirer of pedantry in an age when it was common, he had a passion for knowing things as they are, a contempt for lawyers who busied themselves with their formulæ without regard to the facts of life or history. He is all for that union of science and practice wherein lies the sound development of law. No one perhaps came nearer than he to his conception of the man of true learning—one who knows all that is worth knowing: "qui res maximas in orbe cognito gestas, quo usque hominum memoria pertingit, animo complexus est.[2] But he set little store on mere learning. Though widely read himself in every part of jurisprudence, he, a diplomatist and man of affairs, was always dilating on the value of experience; he wished lawyers to keep a firm hold of the realities of life. Rarely severe in his strictures, carrying into all regions a spirit of serene tolerance and magnanimity, he censures those who will not use their eyes and note what is going on around them, but prefer to display useless learning. In a remarkable passage in which he speaks with a certain bitterness foreign to his nature, he says:—

In explicando Suprematu difficilem me provinciam suscepisse fateor, et, quod quis miretur, in re tam vulgata prope intactam. Cujus rei ratio est, quod illi, qui ad scribendum plerumque animum appellunt, miserabili ingeniorum morbo non nisi vetera crepant, quorum nostris temporibus vix apparent vestigia, recentium

[1] *Lettres et Opuscles Inédits*, par A. Foucher de Carel, 287.

[2] Letter to Huet, Gerhardt 3, 14.

incuriosi; de quibusdam jurisperitis vulgaribus hoc non miror; illis enim omnis sapientia in uno Romani juris corpore conclusa est; experientia autem rerum humanarum, si quam habeat, forensis auditorii cancellos non egreditur; unde non nunquam de publico et gentium jure misera sunt eorum judicia. Hos ergo Cæsarem pro domino mundi, principes nostros pro præsidiis provinciarum, licet perpetuis et hereditariis, habere, mirum non est; neque ab his aliquid magnopere expectes illustrando publico jure, quod nunc viget. Sed illud semper miratus sum, illustres dignitate et rebus gestis et eruditione viros, cum ad scribendum accessere, maluisse eruditionis suæ documenta dare, quam experientiæ atque judicii.

Again and again he betrays his impatience with the *frigidam eruditionis affectionem* then much in favour; he does not spare Grotius (whom he much admired) for not sufficiently dealing with facts of his day; and he is constantly dwelling on the rarity of the combination of learning and invention. He censures those jurists who secretly delight in the uncertainty of the law.[1] The whole of the chapter in which he inculcates this is worth reading and demonstrates his practical wisdom. It is true that, unlike in this respect Bentham and some other legal reformers who do not appreciate sufficiently the difficulties which confront lawyers, he sees the good points of the existing legal system, its thoroughness and the honesty of many of its practitioners. He admired the Roman lawyers: "Dixi sæpius, post scripta geometrarum nihil extare, quod vi ac subtilitate cum Romanorum jurisconsultorum scriptis comparari possit:[2] tantum nervi inest, tantum profunditatis." In the recently published *Opuscula*,[3] edited by Professor Couturat, is a paper entitled "Ad Stateram Juris de Gradibus Probationuum," in which Leibnitz expresses somewhat reluctantly his admiration for the ingenuity and perseverance devoted by lawyers to comparatively small matters. Over a question as to a right of way, an easement for rain, grazing for three goats, they will take as much pains as if it were the Roman Senate dealing with Asia or Egypt. Not that he does not see the drawbacks to this elaboration; he fears that the substance is often sacrificed to the observance of solemn forms—"lassatis litigantibus exhaustisque inter judiciorum moras."

Leibnitz's Legal Works.—His chief legal works or tracts (for many of them run only to a few pages) were these:—

(1) *Specimen Difficultatis in Jure, seu Quæstiones philosophicæ amæniores, ex Jure collectæ*, Leibnitz's thesis for the degree of Master of Philosophy in 1664 (Dutens 4, 68). He argues that a study of the relations of philosophy and law will help to remove the contempt of students of the latter for the former. He discusses such questions as these: Whether an indefinite proposition is equivalent to a universal proposition; whether the maxim *affirmanti incumbit probatio* is reconcilable with the maxim *quod opponens teneatur ad probationem*. He gives mathematical and physical reasons for the rule attributed to Solon that he who digs a trench or grove must

[1] Dutens, 4, 356. [2] Letter to Kestner, 4, 267. See also 4, 254. [3] p. 210.

leave a space from the land of his neighbour equal to the depth. He also discusses the question whether bees, pigeons, and peacocks are wild animals. Then comes a series of logical and metaphysical questions; *e.g.* whether of two contradictions both may be false; whether a person who is asleep is present; what is the true nature of a part *pro diviso* and a part *pro indiviso*, etc. Of the seventeen questions some seem nowadays singularly trivial, but perhaps not more so than many of the questions which our Courts daily discuss. A generation which spends hundreds of pounds in determining what is "an accident," and which carries the question from Court to Court, cannot with any grace be very censorious of the scholasticism of Leibnitz's age.

(2) *De Nova Methodo discendæ docendæque Jurisprudentiæ*, composed about 1667; on the whole, the chief statement of Leibnitz's opinions as to jurisprudence. Of this book Leibnitz says: "Liber est effusus potius quam scriptus, in itinere, sine libris, sine poliendi otio."[1] It is a work of magnificent promise rather than performance. Part I. is general, and deals with matters common to law and other faculties. The first chapter is headed "De Ratione Studiorum in universum" *i.e.* modus perveniendi ad statum (*i.e.* habitum) actionum perfectarum (p. 1). He considers the causes of character, which are either supernatural (*infusio*, divine or diabolical) or natural (*assuefactio*). In short, the first part contains the elements of a theory of education. The second part relates to jurisprudence, which is divided into didactic, historical, exegetic, polemical; in other words, Leibnitz adopts the divisions of theology upon the analogy of which to jurisprudence he insists; a point, by the way, to which he often returns. Didactic or positive jurisprudence contains express enactments and the like. Historical jurisprudence is divided into two parts—internal and external jurisprudence; the latter is concerned with the sources of law; the former with the substance. Of exegetical jurisprudence there are two kinds—(a) *philologia ac philosophia juris;* (b) *interpretatio legum.* The latter is of two kinds—*alia ex textu, alia ad textum.* I cannot describe or do more than refer to the wealth of observations which he makes on the subject of the rules of construction, juridical logic, and grammar, or his suggestions as to the formation of a juridical lexicon. I pass to his remarks on polemical jurisprudence.

The principles of decisions are reducible to *ratio ex jure naturæ*, analogy, and *ratio ex jure civili certo.* Of the *jus naturæ* there are three varieties—*jus strictum, æquitas*, and *pietas.* The first is not explained clearly; it is nothing else, he says, than the *jus belli ac pacis*; it is reducible to the maxims *suum cuique tribuere, honeste vivere, neminem lædere.* Equity he defines as consisting in a certain harmony or proportion; you are not, if you are injured, to declare internecine war; you are to seek restitution, consent to arbitration, etc. The third principle is the will of the ruler,

[1] Dutens 6, 4; see also 5, 378, where Leibnitz says that the book was composed in a Frankfort inn.

not the crude will of the strong man, but the will of the Ruler of rulers, "Existentia igitur Entis alicujus sapientissimi et potentissimi seu Dei, est juris naturæ fundamentum ultimum." Leibnitz next considers the subject of legal reports, or collections of decisions; the great virtue in them which he desiderates is brevity. I am not sure that I exactly apprehend all that he suggests in this connection, for example, as to forming a collection of legal commonplaces (*de locis communibus juris instituendis*). It is to be the work of jurists, especially professors in universities. From these reports should be constructed Pandects, which need not exceed two folio volumes; "quia in multa disciplina et facultate plus librorum, minus rerum, quam in jurisprudentia." He sketches a course of legal study to be divided into three periods—elementary, exegetical, and polemical. I may mention as to the last that Leibnitz insists upon the value of moots or arguments on cases conducted in the manner of a trial; they are in his view an admirable preparation for practical life.

(3) *Specimen Certitudinis seu Demonstrationum in Jure exhibitum in Doctrina Conditionum* a treatise in which Leibnitz expounds the doctrine of conditions or hypothetical propositions as a part of juridical logic. It might also be defined as a treatise of construction of instruments containing hypothetical propositions. It sets forth a long list of theorems (seventy in all) useful in the construction of wills and other documents; *e.g.* "existente conditione, jus conditionale retrotrahitur ad tempus dispositionis mero jure; si unum pluribus applicandum est, in singula ducitur, seu est omnium ab initio; si conditio defecit, dispositio vitiatur." I have not examined the treatise closely; but it is clear that it is drawn largely from the common source of many of the rules of pleading once in use in our Courts and of our rules of construction.

(4) *Specimen Demonstrationum politicarum pro eligendo Rege Polonorum;* composed about 1668, and designed to persuade the Polish nobility to elect as successor to John Casimir, Philip William Neuburg, Count Palatine. Under the name of Georgius Ulicovius Lithuanus, Leibnitz composed this treatise, which had a distinctly practical end: it was intended to support a particular candidature for the throne of Poland. The arugment takes an immense sweep; almost every part of political philosophy is touched upon; the best polity for Europe and Christendom is discussed. Formally in some sixty propositions, and with immense accumulation of learning, he makes good his conclusion. Incidentally there are remarks unfavourable to Russia, which Leibnitz, Slav by origin though it is alleged that he was, regarded as a menace to European civilisation and as a possible second Turkey. The security of Germany was to be considered in the choice of a King of Poland. The treatise reveals the weakness and the strength of Leibnitz—his learning, his acuteness, his ingenuity, and at the same time a marked obsequiousness of character; a disposition to accommodate his arguments to the temper of those whom he addressed.

"To please a prince, to refute a rival philosopher, or to escape the censures of a theologian, he would take any pains."[1]

(5) *Ratio Corporis Juris reconcinnandi*, composed also, with the aid of Dr. Lasser of Mainz, about 1669. It is a tract consisting of about 156 brief paragraphs. It starts by assuming that Roman law will by a sort of spontaneous reception continue to be the common law of Europe. Its authority cannot be removed without a total subversion of law; but its vices may be, and ought to be, removed. And he proceeds to point out and illustrate such vices; which are chiefly *superfluitas*, *defectus*, *obscuritas*, *confusio*. He describes (s. 71 *et seq.*) the effects of these vices, among them being: "Ita jus infinitum, incertum, imperceptibile, arbitrarium, antiquum denique chaos reddi clamarunt plurimi" (s. 76). He passes to the remedies: this confusion is to be removed by *Corpore Juris Reconcinnato* (s. 83); and he proceeds to sketch the outlines of a modern code.

(6) In the year 1687 Leibnitz composed, under a feigned name, *De Jure Suprematus ac Legationis Principum Germaniæ*, in which he discussed primarily the question whether at the Congress of Nimeguen the representatives of the German electors and other princes should be treated as representatives of sovereign States. They were powerful princes with armies of their own and possessing many of the outward marks of sovereignty. But they had taken an oath of fealty to the Emperor; they had paid homage to him; they were in a sense his vassals; and they were subject to the Imperial Court. Mixed with profound reasoning as to sovereignty is a strain of flattery; Leibnitz here, as in so many other of his writings, shows a resemblance to Bacon in his servility to the great. After all that has been written on the subject of sovereignty, this treatise is still remarkable for insight into the nature of government and for the desire which it reveals to bring political and legal theories into accordance with facts more complex and varied than mere bookmen are apt to suppose. "Multiply your categories; study present facts; be not the slaves of your books and your formulæ," is his advice.

(7) *Codex Juris Gentium Diplomaticus*, published in 1693; a collection of treaties and State papers, preceded by an introduction in which are unfolded Leibnitz's views on international law. Leibnitz foresaw its future development. It is true that he immersed it in a theory as to natural law; but he was almost unique in the attention which he gave to treaties and other instruments as evidence of the consent of nations, more trustworthy than quotations from poets, orators, and moralists.

(8) In 1700 appeared a supplement to the above entitled *Mantissa*, in which he further developed his ideas as to some points of international law.

(9) In 1701 appeared *Cogitationes de iis quæ juxta præsens Jus Gentium*

[1] See *Philosophy of Leibnitz*. By Bertrand Russell, p. 1. *Interim cogimur accommodare nos humanæ imbecillitati et utiliá jucundis condere*, Dutens 6, 69.

requirumtur, etc. He discusses under the headings "De titulis honorificis," "De titulis regiis," questions as to what States are sovereign, and the like.

(10) One of the most luminous of his law tracts is that entitled *De Casibus Perplexis*—questions of great difficulty; questions as to which some thought no solution possible; others, that the matter should be determined by lot; others, by the decision of an arbitrator. He will have it that such expedients are unnecessary, that all cases can be determined *ex mero jure*; that no case arises for which jurisprudence has not an answer. "Casum igitur perplexum definio (eum, qui realiter in jure dubius est ob) copulationem contingentem plurium in facto eum effectum juris habentium, qui nunc mutuo concursu impeditur. In Antinomia autem ipsarum immediate legum pugna est, quanquam Perplexitas Antinomia quædam indirecta dici valet." He divides these "cases" into two classes: (*a*) *Dispositio perplexa*; cases in which it is clear who is to be plaintiff or defendant; and the point in controversy is whether there is a right of action, as we should say; and (*b*) *concursus perplexus*, cases in which, the right of action in certain persons being clear, the difficulty is as to priority. With much technical learning he illustrates these questions, particularly rights of preference.

(11) *Observationes de Principio Juris.* He discusses such matters as the basis of the law of nature, positive law, the law of nations, the definition and rule of justice.

(12) *Monita quædam ad Samuelis Puffendorfii Principia*, a criticism of Puffendorf's work. He was no admirer of Puffendorf, whose elegant compilation had in Leibnitz's time acquired authority. He speaks contemptuously of the *Principia*; the chief reproach being that Puffendorf derives law solely from the will of the superior. According to Leibnitz, there is a natural or, as he would prefer to say, divine basis for the rules which Puffendorf regards as arbitrary.

Law and Philosophy.—I have not named all Leibnitz's legal works, nor have I referred to the many passages in his letters and elsewhere in which he discusses legal problems. These were labours sufficient to fill the life of an ordinary man; they at least show that Leibnitz was a prolific writer on law.

A point to be insisted upon is that Leibnitz was no pure theorist or admirer of pure theorists. He was always reiterating the advantages of uniting practice with theory. "Je tiens qu'il faut se défier de la raison toute seule, et qu'il est important d'avoir de l'experience, ou de consulter ceux qui en ont."[1] He is constantly dwelling on the value of practical

[1] Quoted by Couturat, *La Logique de Leibnitz*, p. 156n. A favourite notion of Leibnitz was the improvement of legal procedure. In one of his proposals to the Czar, Leibnitz says: "J'ai songé principalement aux moyens d'établir la meilleure procédure possible afin d'atteindre le juste milieu entre les actes arbitraires de juges et les procès Européens interminables et funestes, etc."

training. But in his legal writings he never ceases to be the philosopher. In his tract entitled *Specimen Difficultatis in jure, seu Questiones philosophicæ amæniores, ex Jure collectæ*, he endeavours to cure jurists of their contempt of philosophy.[1] He proposed to show that philosophy was of assistance and to convince them "plurima sui juris loca sine hujus ductu, inextricabilem labyrinthum fore, et veteres suæ scientiæ auctores mystas quoque sapientiæ summos extitisse." The peculiarity of modern German legal writers, certainly those who treat of *Rechtsphilosophie*, is that they seek to deduce particular rules from a *Rechtsidee*, some *Begriff*, or conception of which special rules are the consequence. I do not question the reasonableness of this process; in fact, I do not see how jurisprudence in the largest sense can exist without these conceptions. I would go farther; the divorce between law and philosophy, which most English students of the former prize highly, is attended by serious disadvantages. It is scarcely conceivable, for example, that certain parts of criminal law now in a state of flux can be dealt with satisfactorily without a discussion of some fundamental philosophical questions. They cannot be cast out without violence, and they will return even if they are bidden begone out of sight. He who reasons of crime and punishment cannot ignore such questions as: Is the will free, or is free will a mere phantom? Are men mere machines or automata? If they are such, what is the meaning, what the reasonableness, of blame or censure? What is the justification of responsibility? If a theory of punishment is based on determinist lines, such theory will have important practical results.[2] It is difficult to work out a system of punishments without dealing with fundamental, ethical, and philosophical questions. It is in a sense true that, as Leibnitz said, "jurisprudentiam veram a religione et philosophia inseparabilem esse." To be sure, such discussions are apt to breed logomachies, and to bring about a faithful repetition of some of the worst failings of the schoolman. There must be constant contact with facts, and practice of jurisprudence is not to become mere word-spinning. Leibnitz, who would not admit that philosophy and law lay far apart, always insisted upon viewing the latter as concerned with living affairs.

I hesitate to speak of the relations of Leibnitz to the jurisprudence of his own time; that could be done to much purpose and with accuracy only by one with knowledge which I do not possess. But some points are clear. Leibnitz found the jurisprudence of his time a collection of dry bones; the lawyers little better than soothsayers and medicine-men, proud of

[1] Here is a characteristic remark as to the relations between logic and legal procedure:—"Quid aliud processus judiciarius quam forma disputandi a scholis translata ad vitam, purgata ab inaniis, et auctoritate publica ita circumscripta, ut ne divagari impune liceat, aut tergiversari, neve omittatur quodcumque ad veritatis indagationem facere videri possit." Couturat, *Opuscules*, 211. See also Couturat, *La Logique de Leibnitz*, p. 566, as to the parallelism which Leibnitz establishes between Logic and Law.

[2] See Die Deterministische Gegner der Zweckstrafe, Liszt, *Strafrechtliche Aufsätze*, 2, 25.

their useless learning. He was profoundly impressed by the faults of the law of the time—its chaotic condition, scattered through many volumes, the important and the trivial thrown together without sense of proportion, the same rule expressed in different terms, to the perplexity of the enquirer, absurd attention given to barren subtleties. He sought to purge it of scholastic barbarities, and bring about a renaissance of jurisprudence. To pass from Leibnitz to other contemporary writers, so far as I know them, with the exception of Bacon, to whom obviously he was much indebted, is to enter a land tenanted by shadows and hollow forms; to come upon endless discussion of texts; refinements on refinements; unwearied accumulations of quotations collected uncritically; acceptance of the loosest statements as if inspired. It was one of the great objects of his life to rationalise and simplify jurisprudence. "Multi anni sunt, quod promisi illustrare jurisprudentiam et amplissimum juris oceanum ad paucos revocare fontes limpidos rectæ rationis."[1] There is no saying what he might have done had he devoted more time to giving effect to the ideas which he evolved.

We see the practical turn of his mind in his remarks on legal education. His dominant idea is that the student is preparing for action; and so he recommended the use of moots. The legal curriculum which he describes is intended to familiarise the student with the knowledge of affairs, and is to extend over two years. He dwells upon the necessity of a wide and thorough legal training as a preliminary to practice, and he insists also, with emphasis which the most enlightened modern advisers of youth could not surpass, on the expediency of supplementing technical study by general reading, travel, and acquaintance with the affairs of life. Having passed through this novitiate, the young student will be fit to deal with legal affairs. Possibly the *Nova Methodus* contemplates a plan of education too vast for intellects much less capacious than his own. But it does not err on the side of underrating the value of practical training. It is worth while quoting Leibnitz's remarks on the effect of the education of the perfect lawyer. We have not much advanced beyond his conceptions. "Hunc ego verum juris philosophum, hunc justitiæ sacerdotem, hunc juris gentium et quod ex eo pendet, publici atque divini consultum dixero; cui possit committi respublica, quem neque ineptæ status ratiunculæ ad novandum impellant, neque a promovenda publica salute inanis juridicarum quarandum spinarum metus deterreat; concident sponte sua Machellivistarum convicia (ipsi se politicos, et, si Diis placet, etiam statistas vocant) qui jurisconsultos rerum imperitos, cautelarum scientes, ineptos leguleios vocant."

Leibnitz and Law Reform.—Before his time in regard to many things, he was far in advance of it as to law. He advocated reforms some of which have long ago been carried out, but others of which are still incomplete. In his eyes the cardinal virtues of any system of law are brevity and perspicuity; he

[1] Dutens 5, 118.

goes so far as to say that it may be better to have unjust laws than laws uncertain and obscure. He admires the inimitable simplicity and *judicii color naturalis* of the early jurists. He who is usually moderate in speech writes with indignation of the legal chaos before him: "jus infinitum, incertum, arbitrarum." It is difficult for us to conceive the confusion and uncertainty before legislation became common—before there was a recognised organ for expressing the will of the community. What would be the taste of things if, to take one branch of jurisprudence, there had been no Factory Acts, no Truck Acts, no Employers' Liability Act, no Workmen's Compensation Act, no Coal Mines Act; if, while great industrial changes were in progress and new conceptions of duties were arising, the Courts sought to modify the law by expending endless ingenuity in giving to old rules wholly new meanings? What, to pass to another region of law, would be the result if there had been no statutory company law, and there had been attempts so to expand the law as to partnership to meet the necessities and convenience of modern commerce? I have not read deeply in the literature of that time; but it is clear to me that there was a profound sense of inability to stretch the old rules so as to meet new circumstances; something like a deadlock; a conviction that the principles of Roman law were unsuited to the new and rising order of things. To put an end to the evils which Leibnitz deplored, he proposed large changes. Few of them, so far as I can make out, he lived to see. Most of them have since been carried out. One or two still remain dreams and hopes. Among his desiderata—some of them suggested by Bacon's *De Augmentis Scientiarum* —recommended in the *Nova Methodus* are:

Partitiones Juris; Sciagraphia Juris in Artem redigendi; Novum Juris Corpus; Elementa Juris; Reformatio Brocardicorum; Compendium Menochii et Mascardi de Probationibus et Præsumptionibus; Theatrum Legale; Historia Mutationum Juris; Historia Irenica; Philologia Juris; Philosophia Juris; Concordantiæ Juridicæ; Arithmetica Juris; Antinomicus Minor; Institutiones Juris Universi; Institutiones Juris Cesarei; Institutiones Juris Saxonici; Summa Titulorum; Leges Numeratæ; Versio Legum Germanica; Ars Hermeneutica; Juris Naturalis Elementa demonstrative tradita; Scientia Nomothetica; Breviarium Controversiarum Juridicarum; Tractatus Tractatuum Reformatus; Bibliotheca Juris; Loca Classica seu Sedes Materiarum; Vitæ Jurisconsultorum; Repertorium Juris; Pandectæ Juris Novi.

A few of these *desiderata* were anticipated by Bacon; some of them anticipated suggestions made by Bentham more than a century later; others were intended for passing needs; others could be accomplished only by those possessed of Leibnitz's genius. But the very titles of some of them are suggestive. They hint at possible developments of jurisprudence which two centuries have left unfulfilled.

His essentially modern spirit comes out in his remarks as to codifica-

tion: he advocated the formation of a code stating in language as homely as possible the law as it is—a Codex Leopoldinus, as he termed it; a code not in the old sense, but a reasoned, orderly exposition of legal principles. It is interesting to compare his views with those of Bacon; the comparison is not to the disadvantage of Leibnitz. It is interesting also to note his proposed divisions of the code which he had in his mind. Though an admirer of Roman law, Leibnitz saw much to censure in it. He was one of the earliest critics of the division in the Institutes. His chief objections to the classical division were, as to actions, that actions were concerned with both persons and things: were brought by persons and related to things. His further objection was: *persona* and *res* are divisions of *fact*; *potestas* and *obligatio* divisions of law. If a division of fact is to be adopted, why not continue it? Why not divide the *persona* into deaf, dumb, rich, poor? Why not divide things into many kinds. Leibnitz's suggested division was as follows:—

(1) Generalia juris et actionum; (2) Personæ; (3) Judicia; (4) Jura realia; (5) Contractus; (6) Successiones; (7) Crimina; (8) Jus publicum; (9) Jus sacrum. These divisions are not unlike those which have been adopted in several modern codes.

Among the many original ideas which he threw out is the idea (subsequently elaborated by Lassalle in his *System der Erworbenen Rechte*) as to the will (testamentary succession) being dependent on the belief in immortality—"testamenta vero mero jure nullius essent momenti, nisi anima esset immortalis." His reason, such as it is, is as follows: "Testamenta vero mero jure nullius essent momenti, nisi anima esset immortalis. Sed quia mortui revera adhuc vivunt, ideo manent domini rerum." Heirs are merely "procuratores in rem suam." This opinion or fantasy was adopted by Lassalle to prove his contention that rights apparently the creation of others are really the outcome of the will of the individual.[1] In Leibnitz it appears as a passing observation: one which illustrates his ability to give a reason for anything; the more absurd the proposition, one is tempted to say, the more brilliant and ingenious the justification.

Leibnitz and Jurisprudence.—What was Leibnitz's conception of the aim and object of jurisprudence? We have not arrived at so clear an agreement on this point as to make his answer unimportant. Is it a sort of grammar of law, a concise statement of certain rules? Is it the study of the forms of legal institutions and instruments, or is it something much more? Is it an attempt to discover order in these various forms, to arrive at the laws regulating all legal phenomena? Under the once common and fallacious assimilation of laws of nature and laws enacted by society was there a truth? Is jurisprudence wholly concerned *de lege lata*? or is it occupied *de lege ferenda*? His answer to these questions is not precise. He was not very particular as to drawing the boundaries of sciences. He

[1] Oncken's Lassalle 181.

travelled freely across their frontiers; he had, indeed, a predilection for questions lying partly in the regions of several sciences. It must be owned, too, that he is not very consistent and that, owing to his habit of pursuing different lines of study, abandoning them for a time and then resuming them without always taking up his investigations at the point at which they had stopped; his language often is fluctuating. A further circumstance is to be noted: in his desire to propitiate and convince he accommodated his language to his audience; he spoke to theologians very differently from the manner in which he addressed princes or scholars.[1]

Undoubtedly he does not distinguish sharply jurisprudence and ethics. In his *Elementa Juris Naturalis*, Leibnitz defines justice as "habitus (seu status confirmatus) viri boni." "Vir bonus est quisquis amat omnes." "Amamus eum cujus felicitate delectamur." He expresses the same point thus: "Justitia habitus amandi alios." In the preface to the *Codex Diplomaticus* he returns to this point of view. "Justitiam . . . definimus caritatem sapientis. . . . Caritas est benevolentia universalis, et benevolentia amandi sivi diligendi habitus. Amare autem sive diligere est felicitate alterius delectari, vel, quod eodem redit, felicitatem alienam adsciscere in suam." In his works such expressions as these are common: "La justice dans le fond n'est autre chose qu'une charité conformé à la sagesse." "Cum vero (nihil) aliud apud me justitia sit quam caritas ad normam sapientis."[2] Sometimes he mixes religion and jurisprudence. Sometimes he draws no distinction between jurisprudence and ethics, as in such phrases as these: "Jurisprudentia est scientia justi seu scientia libertatis et officiorum seu scientia juris, proposito aliquo casu seu facto." "Jurisprudentia est scientia actionum, quatenus justæ et injustæ sunt." Sometimes he deviates from the ethical conceptions developed in certain of his books; *e.g.* "Justitia est virtus servans mediocritatem circa effectus hominis erga hominem"—the Aristotelean doctrine. Sometimes there is an approximation to the utilitarian theory: "Justam alquis injustam est quicquid publico utile vel damnosum est."[3] More than one of his definitions come to saying that one thing is something else altogether different from it.

It is naturally objected to Leibnitz's notion of jurisprudence that it is much too large. In giving it a very wide province he was not alone. In the sixteenth and seventeenth centuries, three minds of the first order—Bacon, Leibnitz, and Vico—applied themselves to the study and practice of law. All three of these great thinkers conceived of jurisprudence in a

[1] See the preface to *Œuvres de Leibnitz*, par A. Foucher de Carel, vol. ii. p. xi., as to Leibnitz assuming now the *rôle* of Protestant, now that of Catholic, in order to bring about a reconciliation.

[2] It is worth while quoting his definition of Sapientia: "Sapientia est perfecta eorum rerum, quos homo novisse potest, quæ et vitæ ipsius regula sit et valetudini conservandæ artibus omnibus inveniendis inserviat" (Gerhardt, 7, 90, *De Vita Beata*).

[3] 4, 185.

very large sense; none of them understood it more comprehensively than Leibnitz. All three of them agreed in seeking a basis in the order of nature, in the constitution of society, for jurisprudence. Leibnitz does not treat law as a set of arbitrary rules, similar to those of a popular game. In his view it is not a mere external arrangement, the accidental expression of power. It arises necessarily out of the constitution of society. Austin has taught us to distinguish sharply between law in the legal sense and law as a term of science, expressive of the observed order of nature. But dwelling at great length upon this distinction and exposing a common fallacy, he has drawn away attention from important truths. He turned, so far as he could, jurisprudence into a narrow channel, and shut out lawyers from the larger views and fruitful enquiries which Leibnitz and Vico pursued. I do not propose to discuss here a question which I have elsewhere dealt with at length. But it may be pointed out that the study of comparative jurisprudence brings us nearer to Leibnitz's point of view. We now know that there exists at each stage of society a *Rechtsordnung* corresponding to the economical structure and ethical ideas of the time; that to the economic skeleton of society belongs a certain legal covering; and that the law and ethics of an age are of one piece. Modern sociology insists upon the close relationship of all parts of the social organisation; the interplay of legal, ethical, and economic forces, and the harmony resulting therefrom. In his own language Leibnitz conveys the same idea. He too insists upon the harmony of which laws are the expression. As Höffding points out, "in Leibnitz's philosophy of law, as in his whole system, the fundamental thought of harmony existing between individual beings is prominent."

It is objected to Leibnitz's conception of jurisprudence that it mingles law and theology; a criticism applicable to almost all the writers of his age.[1] To them this fusion was as natural as is to our generation the consideration in one view of the facts of the physical and mental world. Leibnitz could not be content with a synthesis which did not include theology, ethics, and laws—in his view parts of one whole. And there are advantages in this large treatment; advantages similar to those claimed to-day for sociology; particularly the advantage of co-ordinating legal phenomena with cognate facts.

Leibnitz and International Law.—Leibnitz is one of the founders of international law. He was one of the first to take steps to reduce to order the mass of treaties. His preface to the *Codex Juris Gentium Diplomaticus* is a review of the whole field of diplomatics, and contains a discussion of some of the chief questions of international law. He did much to give form and definiteness to international law. He appreciated

[1] Of theology he says: "Quæ est quasi jurisprudentia specialis." "Theologia species quædam est jurisprudentiæ universim sumtæ. There are many similar sayings by Leibnitz. My friend, Mr. Taylor Innes, tells me that in a conversation with Mr. Gladstone the statesman said to him with emphasis, "Believe me, sir, no one can be a perfect lawyer who is not a theologian."

the significance of Grotius, to whom he never refers without respect. But he was sensible of the uncritical character of Grotius's work, the confusion and disjointed state of the law expounded therein, the absence of an adequate philosophy of law and his indifference to modern facts. Leibnitz did his best to create what is still a desideratum, an accurate and stable terminology of international law. It is true that his ideas are coloured by his teaching as to natural law, and that in his hands it took a shape not unlike morality. But is there an end of the idea of natural law? May it not, revised in the light of psychology, history, and comparative jurisprudence, have a future before it? The notion of a law accepted by all persons is dead. But with its death has come the truth that the play of arbitrary legislation is small; that customary law is but another name for a group of rules determined by the ethical beliefs, the economical conditions, the structure of the society in which it prevails; and that law is the natural, that is the inevitable, outcome or concomitant of a particular social organisation.

One thing must impress the readers of his tracts on international law—his unconsciousness of some of the difficulties which press upon modern students. They ask who is the law-giver? What is the authority or the sanction for these rules? Leibnitz asks nothing of the kind, or is at no loss as to the answer. In civilised states at some epochs these questions might be put with equal propriety as to their municipal laws; it would be hard to say who is the legislator or where the sovereign power resides. Certain jurists, private persons, members of no Court or legislature, have great authority. What they say is accepted as law, unless the counter-dictum of some one equally eminent can be cited. What was the authority of Baldus or Cujas or the many jurists whom Leibnitz quotes? Much the same as the authority of municipal law. The word of the civilian had a force in itself. It was opinion, but generally irresistible opinion. Leibnitz—who deprecated the eternal fruitless logomachies as to definitions of jurisprudence—in a letter to a correspondent, says on this subject: "Nec video, quod prohibeat consuetudines plurium gentium annotare, quas vim juris habere arbitror, non minus quam in civitate mores statuto æquantur. Atque hæc adeo vera puto, ut ea quoque, quæ recepta patent inter gentes circa publica cujusque populi jura seu communia jurium publicorum quæ sunt apud diversas gentes, ad jus gentium referam."

To bring these notes to a close: Leibnitz had book learning and its rare companion, a desire to keep in touch with facts. He sought to bring jurisprudence into line with other sciences. He was interested in its philosophy, versed in its history. He had always present the great object of law, to do justice between men; he re-discovered, it may be said, justice beneath the formalities and technicalities of his time; if he resembled Selden or Savigny, he also resembled Bentham. He anticipated more or less clearly many of the future developments of jurisprudence, and some even now dimly seen, and only by a few.

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REVIEW OF LEGISLATION, 1903.

INTRODUCTION.

[*Contributed by* Sir Courtenay Ilbert, KC.S.I.]

Owing to unforeseen and unavoidable circumstances, the publication of the "Review of Legislation of 1903" has been postponed for some time beyond its usual date. In future it is proposed to bring out the annual review of legislation on a fixed date in each year, and to fix that date shortly before the end of the year following that of the legislation under review. Thus the review of the legislation of 1904 would appear in the middle of December, 1905. The materials to be reviewed are so copious, they have to be collected from so many different quarters, the task of arranging, digesting, and editing them is so arduous and laborious, that an earlier date for publication could not safely or wisely be fixed.

Ten years have now elapsed since the work of preparing these annual reviews was first set on foot. The earliest of them dealt with the legislation of 1895, and they have appeared continuously since, at as early dates after the expiration of each legislative year as was found to be practicable.

In these circumstances it may be worth while, at the risk of some repetition of what has been said elsewhere, to recapitulate the objects with which this laborious task was undertaken. Ten years ago it was difficult, indeed practically impossible, for the Legislature of one part of the British Empire to know what was being done by the Legislatures of other parts. Yet every civilised State is concerned to know how other States are dealing with difficulties, political, social, or economic, similar to its own; how they administer justice, reconcile the rights of capital and labour, regulate the liquor traffic, deal with marriage and divorce, patents, literary and industrial property; how they educate children, reform criminals, reclaim drunkards, control railways, trading companies, and merchant shipping. In the mechanism of modern States the capital fact, according to Sir Henry Maine, is the energy of the Legislatures. In the British Empire alone there are no fewer than sixty Legislatures busily at work; in the United States there are about fifty. Each of these is working out its own problems in its own way; problems differentiated by local conditions

but often identical in principle. The experience and experiments of each are profitable and instructive to the others. Manitoba cannot afford to be ignorant of the mode in which New South Wales is settling its industrial disputes by arbitration and boards of conciliation. New South Wales cannot afford to be ignorant of what Ontario is doing for the reformation of criminals. The experiments of New Zealand in the regulation of the liquor traffic may be found useful in Natal. The venerable Parliament at Westminster has often learnt lessons from the experiments made by her daughters beyond the seas.

It was with the object of collecting, comparing, and disseminating knowledge of this varied activity that the Society of Comparative Legislation was founded in 1895. Since then the Society has published every year in its journal a summary of the legislation of the British Empire, and has recently added summaries of the legislation of the United States and of several foreign countries. Appended to the annual summary is a full index showing at a glance the legislation on any given topic during the year under review.

The Society has in its work the cordial approval of such Departments of Government as the Colonial Office, the Foreign Office, the India Office, and the Board of Trade, and owes much to their friendly help and co-operation. It has also obtained the sympathy and support of statesmen of all shades of opinion. But all the work of the Society is done gratuitously. The sole expenses incurred are those of printing; neither the editors nor the secretary nor the contributors are paid. They have been induced to undertake the task by the interest which they feel in the subject and by the belief that the work in which they are co-operating is one of scientific and practical utility and of Imperial importance.

The task which the compilers of the review have set themselves is, apart from its magnitude, of no mean difficulty. Probably no one can, until he attempts the work, realise how difficult it is to bring out, within reasonable compass, the real significance, importance, and effect of a legislative enactment in a manner instructive, or even intelligible, to those not already familiar with the subject-matter and with the circumstances under which the enactment was passed. A mere summary of the provisions of the law is not sufficient, may even be misleading. And where, as is often the case, an amending law assumes a technical form, its full text is absolutely unintelligible except to the initiate. What is needed for the exposition in each case is a knowledge of the previous state of the law, of the circumstances out of which the demand for legislation arose, of the influences which operated on the legislators, and of the objects which they aimed at by their legislation. Such knowledge is often very difficult to obtain, especially with respect to out-of-the-way subjects and out-of-the way regions. The editors have done their best to obtain the assistance of experts having special knowledge of particular subjects or particular

countries, and, to take two instances among many, any one who glances at the pages devoted to the legislation of Australasia and of South Africa will see how much the Society are indebted to the special knowledge and experience of such men as Mr. Harrison Moore and the Attorney-General for the Cape Colony.

A summary of this kind, like a dictionary, supplies mixed reading and contains many arid details. But there is not a page which does not contain some item of interest to the student of laws, of institutions, and of sociology. Perhaps the legislation of Victoria may suffice as a sample. In 1903 Victoria gave herself a new Constitution Act, which, in consequence of a demand for retrenchment arising out of the transfer of services from the State to the Commonwealth, cut down the number of ministers and members, and which presents several interesting features. It adopts, with modifications, the continental system of allowing a responsible Minister of the Crown to appear and speak in the House to which he does not belong. It requires a responsible minister of the Crown to secure a seat in Parliament within three months on pain of loss of office. It takes public officers and railway officers out of the territorial constituencies to which they would naturally belong, and forms them into separate constituencies. It adapts a provision of the Commonwealth Constitution by enabling the Legislative Council not to amend, but to make suggestions for amendment of, a Money Bill; and contains provisions, borrowed from the same source, for settling disputes between the two Houses. As introduced, the measure provided for women's suffrage, but this provision was dropped.

In the same session the Victorian Legislature passed a comprehensive scheme of local government, dividing the State into "municipal districts," of which the rural and sparsely settled are christened "shires," while the urban and more populous districts are called "boroughs." A borough with a certain revenue may be declared a "town," and with a higher income a "city." Thus the old country terminology is applied, with different shades of meaning. The Act defines the constitution and powers of each "municipal district."

A Factory Act of the same session establishes a Court of Industrial Appeal for dealing with the determinations of the special boards for fixing a minimum wage which have been in existence since 1896. An Old Age Pension Act limits to £150,000 the amount which may, without further Parliamentary sanction, be paid in any year for pensions under the Act of 1901. A Savings Bank Act deals with advances which may be made to farmers by the Commissioners of Savings Banks under a system established in 1896. Another Act establishes a Council of Legal Education with full power to make regulations about the qualifications for admission of barristers and solicitors. There is a Succession Duty Act fixing a range of graduated duties, and there is a Companies Act, enlarging from twenty-five to forty the maximum number of members of those small proprietary companies which

are exempted from the stringent provisions of the Companies Act of 1896. A comprehensive Lunacy Act places the administration of the lunacy law under an Inspector-General in Lunacy, who must be a qualified medical practitioner. Railways are the property of the State in Victoria, and a Railway Act was passed in 1903 to protect the Railway Commissioners against the costs of litigation ordinarily incidental to the management of railways.

Whilst Victoria was grappling with problems of the most advanced democracy, the Legislatures of West Africa found themselves confronted with the customs and practices of primitive barbarism. An Ordinance of South Nigeria is directed against trials by ordeal and witchcraft, and prohibits in particular "trial by the ordeal of sass-wood, esere, bean or other poison, boiling oil, fire, immersion in water, or exposure to the attacks of crocodiles or other wild animals." The last section, authorising the utter destruction of any "house, grove, or place" in which ordeals are held or prohibited "jujus" are invoked, might, as Mr. Albert Gray remarks, be taken from a precedent among the Acts of King Hezekiah. In such contrasts does the legislation of the British Empire abound.

The review of foreign legislation deals with the laws of Egypt, France, Italy, Sweden, and the United States. Mr. Newton Crane's statistics as to the number of laws passed and the time devoted to legislation in the United States, and his illustrations of the trend of public feeling and opinion in the States, as indicated by the course of legislation, are specially interesting.

FOREIGN.

1. EGYPT.

[*Contributed by* W. E. Brunyate, Esq., *Khedivial Counsellor.*]

Laws of General Public Interest—14.

The legislative output in 1903 was the smallest since 1880, and included no Law of first-rate importance. This was in large part due to the fact that the revised Criminal Codes, which were before the Legislative Council during the greater part of the year, were not promulgated until the beginning of 1904.

The year is none the less noteworthy as being the first in which the Laws of General Public Interest have been separated from the mass of miscellaneous decrees (including expropriation decrees, nominations, grants of decorations, etc.) with which the statute-book had theretofore been encumbered. The title "Laws" has replaced that of "Laws and Decrees," and the Laws, as published in the annual volume, are consecutively numbered, so that they may presumably be cited in future by number instead of by date, although there is no statutory provision to that effect.

The tendency to proceed, in amending legislation, by textual amendment or by repeal and consolidation, which has recently shown itself, became more marked, although more remains to be done in that direction.

Criminal Law.—By Law No. 3, agents of the Customs concerned in revenue frauds are made punishable by imprisonment. Law No. 6 extends the list of officers of the Sanitary Department with the powers of officers of judicial police.

Finance.—Law No. 1 amends the law as to the assessment to tax of Government waste lands which are sold. Law No. 11 suppresses the house tax in three provincial towns. Law No. 12 is the annual Budget; Law No. 13, the Corvée Budget, will be the last of its kind.

Fisheries.—The fisheries throughout Egypt have been farmed from time immemorial. Now, except for a few excepted districts, the Government monopoly is abolished by Law No. 14 and is replaced in territorial waters and in the principal lakes by an annual licence tax. Fishing is declared

free in the Nile and in all canals, except where restriction is necessary either in the interest of public order or of public works. Power is taken to bring the excepted districts under the law, by order of the Minister of Finance.

Irrigation.—The annual Decree restricting the sowing of cereals during the season of low-flood is made permanent by Law No. 4.

Local Government.—Law No. 9 reduces the minimum age for village headmen from twenty-five to twenty.

Mehkemehs.—Law No. 8 exempts from stamp dues charitable deeds of settlement (*wakfiehs*) which contain no reservation in favour of the settler.

Post Office Savings Bank.—Law No. 10 reduces the minimum for a first deposit from P.T. 20 to P.T. 5 (four shillings to one shilling).

Public Health.—Law No. 5 makes general the application of the Decree of 1892 as to the sanitation of mosques and public baths. Law No. 7 enacts severe penalties for offences in connection with the outbreak of rinderpest which occurred in 1903. The maximum penalty under the old law was a week's imprisonment, being probably so fixed in order that it might be applicable to Europeans. A provision authorising compulsory inoculation was warmly welcomed by stock-owners, but largely failed of its effect owing to the use at the outset, with disastrous results, of defective serum.

Public Servants.—Law No. 2 provides for Councils of Discipline for civil employees of the War Office wherever there is an Egyptian garrison. The case intended to be covered is that of civil employees of the War Office in the Sudan, for whom the old law made no provision.

2. FRANCE.

[*Contributed by* GEORGE R. BARCLAY, ESQ., LL.B.]

Religious Houses.—The French legislators in 1903 were still preoccupied by omissions and shortcomings in their great *Loi sur les Congrégations* of July 1st, 1901. It was found no easy matter to settle and wind up these huge monasteries and convents.

Questions of competence arose. There were innumerable difficulties to overcome regarding trustees, liquidators, etc. Even where congregations applied for authorisations and remained in France, many points required settlement. It was only towards the middle of the year that the position became clearer.

Taxing Unbuilt Land.—A Law which has had a very great effect on the transformation of Paris is that of July 10th, allowing the Municipal Council of this city to impose a tax on unbuilt land (*propriétés non-baties*).

This had the immediate effect of reducing the numbers of gardens, and in some districts, such as Passy (the West End of Paris), the change has been extraordinary. Beautiful gardens have been replaced by five-story appartment houses, and even the park round the historical Château de la Muette, built by Francis I., has been reduced to half the size it was three years ago. This tax is limited to 0·10 per cent of the value of the land.

The "Octroi" System.—A word might be said *en passant* about the *octroi* system in France. All large cities and many small towns have at every entrance to the locality a sort of custom house, and certain products are taxed as they enter. Most of these only tax food-stuffs, and some only tax certain food-stuffs, generally those which they can produce themselves. This is pushing protectionism as far as it will go. The Ville de Paris, however, taxes nearly everything destined for consumption—food, wine, coal, petrol, oil, etc. The tax is sometimes very high. On petrol and oil, for instance, it is 1 franc per gallon, or about 60% on the value outside of Paris.

Preference Shares.—The most interesting and most important Law of the year introduced for the first time preference shares (*actions de priorité*) into French law. Till November 17th, 1903, preference shares were not recognised by the law.

Art. 34 of the Code of Commerce was construed as follows: "Le capital de la société se divise en actions et même en coupons d'action d'une valeur égale" (The capital of the company is made out in shares and in fractions of shares of equal value).

This was first modified by the Law of July 9th, 1902, which was found to be very faulty. But the Law passed on November 17th, 1903, is worded as follows:—

"Art. 1.—Art. 34 of the Code of Commerce is completed as follows: The capital of companies should be divided into shares and fractions of shares of an equal nominal value. Every company can by deliberation of a general meeting create preference shares which possess advantages over the other shares, and which confer prior rights either on the dividends or on the assets of the company, or even on both of these, if the memoranda of association do not expressly prohibit the creation of such shares. Unless the memorandum of association prohibits it, owners of preference shares have the same right of vote as owners of ordinary shares . . . . This Law is applicable to all companies, whether formed before or since the passing of this Law."

Besides the above, Laws of minor interest were passed regulating, modifying, and completing the Laws of past years.

3. GERMANY.

[*Contributed by* Ernest J. Schuster, Esq., LL.D.]

There was no legislation of any general interest this year.

4. ITALY.

[*Contributed by* T. C. Giannini, Esq.]

Municipal Undertakings.—One of the most important Laws of the year 1903 is that of March 29th (No. 103), by which the municipal bodies (communes) are authorised to undertake the establishment and the direct exercise of undertakings for the public service, especially those relating to drinking water, lighting (public and private), tramways, telephones, dispensaries, scavenging, funerals, grinding of corn and baking of bread, butchers' work, baths and washhouses, night shelters, motive power (of water or of electricity) services of omnibuses and motor-cars.

The direct working management is distinct and separate from the municipal board and is represented by a skilled technical director (Arts. 2, 4), who is responsible jointly with that body to a special commission of the administration. The undertaking of the service must be decided upon by the communal council and by a *commissione reale*. Several communes may form a "corporation" for undertaking the business of a service of general interest. If the communal council be changed or dissolved, this fact does not dissolve the commission which manages such service. The prefect of the province can, if he believes it necessary, order an enquiry; and if the conduct of the business by the commune be imperfect or irregular, the prefect may order the undertaking to be put an end to. The communes are empowered to take over out of private hands, on payment of fair compensation, enterprises for which such private persons had obtained concessions, provided that ten years have elapsed and one-third of the time for which the concession was granted, or at the end of twenty years.

Arrangements affecting Industry.—By the societies or *collegia* of *Probi Viri* a gold medal is given and some silver medals to be conferred every three years on those colleges (societies) which more especially distinguish themselves in the settlement of the disputes entrusted to them (R.D. October 22nd, 1903). The Law of July 8th (No. 320) abolishes the excise duty on *agrumi* (oranges, lemons, mandarins). The Government, moreover, has exempted from almost all duties (stamp duties, etc.) the articles of association of companies whose object is trade in such fruits, and the shares and stock of such companies. It has also relinquished as to its share of profit the railway rates on such goods, and has given facilities

at the docks for such fruits. Alcohol, if derived from wine, and methylated, and for use only in industrial work, is exempted from taxation (Law of March 22nd, 1903, No. 152). The substances for methylating, generally such as have a disgusting odour—to render any other use of this spirit impossible—are provided by the State.

The duty on alcohol, in whatever manner produced and not intended for industrial use, is slightly increased. The actual production of alcohol is put under a system of accounting or gauging. A special reduction is allowed for co-operative friendly societies formed by producers and cultivators for extracting alcohol from the produce of their own lands.

Regulations of the Erythrea Colony.—By the Law of May 24th, 1903, is created, in connection with the Ministry of Foreign Affairs, a Colonial Council which for the present will have only to do with Erythrea. The Government is empowered to extend to the Colony the laws and regulations of the kingdom (Art. 3); but the personal status of natives and their private rights will be regulated according to native customs and religion. The Governor may grant mining concessions and make grants of land, etc. The Governor can, if necessary, lower and also increase the taxes on the natives, but not, however, beyond one-third. To provide for railways, roads, and water supply, the Governor has power to contract loans and debt, but the burden of the annual payment, including the proportionate reimbursement of principal, cannot exceed two-thirds of the average total income of the last five years; and cannot in any case last beyond a fixed number of years.

International Treaties.—There were various treaties concluded in this year; of which we note that confirmed by the Law of April 16th, 1903, with Germany for reciprocal protection of patents, designs, and trade marks; another, by the Law of December 24th, 1903, for a provisional commercial agreement with Austria-Hungary. By the Law of February 12th, 1903, was confirmed the Sugar Convention of Brussels to which nine States, including Great Britain, have given adhesion. By Royal Decree of May 17th, 1903, was confirmed the regulation for applying in Italy the international convention for protection of industrial property. By the Law of December 28th, 1902, are recognised the diplomatic privileges and exemptions of foreigners who are members of any arbitration tribunal convoked under c. ii. Art. 4 of the Hague Convention.

Post and Telegraphs.—Three important Laws on this subject were promulgated.

The first (June 11th, 1903) improves the service of the Post Office Savings Bank. No depositor may have more than one account in his own name, nor any in a fictitious name. These accounts cannot be attached for any claims whatsoever, unless it be a criminal prosecution, or under a judicial decree. Deposits can be made in stamps or coin of 1 lira minimum and 1,000 lire maximum (£40 sterling), and cannot exceed in two years the maximum sum of 2,000 lire. For deposits higher than 100

lire (£4) special confirmation is required. Withdrawals cannot be under 1 lira. The interest is settled every six months by agreement between the three Ministries of Treasury, Trade, and Post Office. (At present the rate is 2·60 per cent.) Specially favourable treatment in respect of the limit of amount bearing interest and of deposits is given to mariners, to Italians resident abroad, to pupils in elementary schools, etc.

By the Law of April 5th, 1903, the Government was empowered to expend £32,000 for erecting a wireless telegraph station to communicate with South America and other parts of the world. The installation was to be at Coltano (Pisa).

Italy is among the very few countries which have not a State telephone service. In 1903, almost all the telephones were in towns and their neighbourhood. Scarcely any telephones existed between towns. By a Law of 1903, the State resolved to construct, in four years, eighty-four telephone lines between cities, to be Government property. The others are in general left to private enterprise. The State reserves to itself the right of redemption after twelve years. At the expiration of twenty-five years the full ownership of the lines passes to the State without compensation. No exclusive concessions are granted; the Government can carry on such service, and can give other concessions where wanted, even for the same locality. Holders of a concession must pay so much per cent. on the income that they earn. This may be either by way of subscription or a rate of so much for each conversation. There are certain fixed maximum limits which the concession holders in fixing their tariffs must not exceed. They, moreover, must not compete with the telegraphs. They must not divulge the telephonic conversation nor allow it to be divulged by writing in any way. The State takes no responsibility for the telephonic services. The opportunity given by this Law was taken to declare the principle of non-responsibility of the State for the inland telegraph service also; for the international service, this had been already declared by the St. Petersburg Convention of July, 1875 (Art. 3).

5. SWEDEN.

[*Contributed by* Nils Setterwell, Esq.]

Forestry Legislation.—By a Law dated July 24th, 1903, certain fresh stipulations have been made respecting the care and management of forests in the kingdom of Sweden, with a view to checking the squandering of that source of national wealth. In the various districts, Forestry Boards have been called into existence, which are charged with seeing that, within their several districts, the cutting of the timber shall not be carried on in such a way, nor the ground, subsequent to the felling, be so treated, as manifestly to imperil the prospects of the regrowth of the timber.

Should any case of neglect in this respect arise, it shall be incumbent upon the Board to see that the owner of the timber, on a plan approved by themselves, take measures to remedy the neglect committed, by providing for regrowth in natural course. If the owner prove unamenable to their representations, the Board are empowered to institute legal proceedings against him; and it then devolves upon the Court before whom the case is tried to determine what measures should under the circumstances be adopted, and to prescribe a limit of time within which they are to be carried into execution. Pending the adoption of those measures, it shall be lawful to prohibit the cutting of any timber at all.

These Forestry Boards are, moreover, instructed to further the interests of forest economy in general by spreading information as to the rational management of forests.

Special provisions were enacted for the most northerly administrative divisions of the country, prescribing certain minimum measurements which a tree must have attained, before it may be felled.

Insurance Regulations.—By the provisions of a Law promulgated on July 24th, 1903, certain new regulations have been introduced affecting the conduct of insurance business as carried on by the Swedish insurance companies. The aim of these regulations is to secure for investors as large a measure of safety as possible, and to promote their interests generally as far as may be. To see that the above provisions are duly observed by those whom they concern, an Insurance Inspection Board has been appointed by the Crown, to embrace within its control all insurance agencies throughout the country. In case the injunctions which the aforesaid Board may see fit to impose upon any insurance company for the securing of a necessary degree of safety on behalf of the investors be not complied with within the prescribed time, the Crown shall have the power, upon receipt of a notice of the fact from the Board, to direct the company to wind up its affairs. Whenever a company goes into liquidation or becomes bankrupt, the Insurance Inspection Board shall take in hand the administration of all the securities of the company on which the investors have a lien.

By a special Law of July 24th, 1903, regulations have been enacted concerning the rights of foreign insurance institutions to carry on business in Sweden. Such rights may be granted by the Insurance Inspection Board, subject to the production, on the part of the institution seeking the privilege, of certain documents, the most important of which is an attestation to the fact of a deposit of a prescribed sum of money as a guarantee having been duly made in the coffers of the Swedish Riksbank. Further, the business shall be carried on for the institution in question by a duly authorised agent-general, resident in Sweden. The agency itself, and all legal matters arising out of the business it carries on in Sweden, shall be subject to Swedish law and be amenable to decisions of Swedish legally

constituted authorities. In case any foreign institution desires to discontinue the agency, it shall be incumbent upon it to notify that desire to the Insurance Inspection Board, at the same time giving the name of a representative, whom the Board can approve, with power to represent the institution as regards insurances already affected.

Shipping.—By a Law dated August 18th, 1903, it was enacted that the consulage, which hitherto every Swedish trading vessel has had to discharge on loading or unloading at any foreign port where a Swedish consul or vice-consul is stationed, should cease to be levied after the close of 1903.

In order to promote maritime commerce, especially with foreign countries, a grant of five million Swedish crowns was voted by the Swedish Diet, to be loaned out to shipowners on easy terms of interest and repayment.

Banking Legislation.—By a number of Laws bearing date September 18th, 1903, certain new regulations have been introduced with reference to the operations of banking companies. It devolves upon the Crown in every special case to accord a banking company the privilege of carrying on its business. A licence granted to that end is only valid for ten years at a time, at the expiration of which period it must be renewed. The new regulations embrace numerous far-reaching stipulations regarding the organisation of the companies, the disposition of their funds, etc., etc. Control and supervision of the banking companies is placed in the charge, on the one hand, of the Governor of each province or of the city of Stockholm, as the local deputy of the King, and on the other of a special Bank Inspector appointed by the Crown. Moreover, the Crown or the Minister of Finance is empowered, if they see fit so to do, to have an investigation instituted into the operations of any banking company. It is stipulated, further, that all deeds and securities shall be accessible to the above-mentioned controlling authorities, and that all information they may desire shall be given them. In case of serious infringement of the regulations, it shall rest with the Crown to sentence the bank in default to forfeit its licence. If a banking company becomes insolvent, an official receiver shall be appointed to take part in the administration of the bankrupt estate.

Laws respecting the Care of Homeless, Wayward Children, etc.—By a Law of June 6th, 1902, which did not, however, come into force until January 1st, 1903, certain enactments were put upon the statute-book which had in view to provide more efficient control over the mode in which foster-children are looked after, and also to render it possible for the proper authority to intervene in cases where such children are being neglected by their foster-parents, in order to bring about a better state of things in that regard by removing the children, if need be, from the home where they are boarded, and placing them with other people more fitted for the task of caring for them properly. The functions of overseers in this particular are entrusted to the municipal or communal bodies; the

Royal Medical Council is enjoined to afford the necessary advice and instructions regarding the care of foster-children.

A Law of June 13th, 1902, which came into force on January 1st, 1903, dealing with the bringing-up of depraved and morally neglected children enacts that provision shall be made for the children in question to obtain education specially adapted to their needs, in private homes or in refuge homes, organised for the purpose, in cases where the children have suffered from neglect as to their moral training, and in reform schools, founded for that purpose, for cases where the children are depraved in character, in order that such children may grow up useful and law-abiding members of society. The education thus afforded them shall be at the charge of the State, of the provincial councils, and of the municipalities and communes, though right of recourse to a certain extent to the child's parents or to the person or persons who are otherwise responsible for the maintenance of the child is prescribed. In every school area there shall exist a Children's Vigilance Committee, upon which to have the children in question under their surveillance, so that these provisions for their benefit may be observed. If any child be found to be neglected morally, or depraved, a warning shall be administered, in the former case, to the person whose duty it is to look after the said child, and, in the latter, to the child itself, who may, in addition, be chastised in proportion to the degree of his or her depravity. Should these measures prove of no avail, the Vigilance Committee shall be empowered to remove the child from its home and arrange for its bringing-up in one or other of the above-prescribed manners.

By a Law of June 27th, 1902, which, however, did not come into force until January 1st, 1905, it was ordained that such juvenile offenders as are too old to be let off unpunished, and to be relegated to refuge homes or reform schools to be educated, but who at the same time are too young to be considered, of necessity, liable to the punishments in general prescribed for the misdemeanours of which they have been guilty, may, provided the Court which shall have tried their case deem fit, be taken charge of for correctional treatment by one of the reformatories, rather than be condemned to serve the ordinary sentence for their offence. Reformatories are, as a rule, maintained by the State; it is, however, expected that such institutions may, in the future, be established by municipal bodies, or even by private individuals. Recourse, to a certain extent, for the cost of maintenance may be had to the pecuniary resources, if any, of the child or to those of its parents.

6. UNITED STATES OF AMERICA: STATE LEGISLATION.

[*Contributed by* R. Newton Crane, Esq.]

In all of the States and Territories of the United States, with the exception of Alabama, Iowa, Kentucky, Louisiana, Maryland, Mississippi, Ohio, Rhode Island, and Virginia, sessions of the Legislatures were held during the year 1903. The total output of laws and resolutions (the latter having the effect in many instances of laws) was 14,394. It is interesting to note that in nearly all of the States the legislative bodies began their sessions in January and that the average time occupied in their labours was 80·9 days. The Legislature of Massachusetts was the most deliberate in its work, taking 170 days to pass 810 laws and resolutions, while Oregon, South Carolina, and Wyoming each spent only forty days in legislation. As the Legislatures of Oregon and Wyoming hold only biennial sessions, the time occupied by the legislators in affairs of State is, at this rate, less than three weeks in the year.

Notwithstanding the large figures in which these totals are expressed, the number of new laws, and especially of novel laws, is very small, and none of them of very great importance, the great majority of Acts passed being either emendatory or confirmatory of existing laws or in the nature of appropriation bills.

Constitutional Changes.—A large number of the States have dealt with propositions to alter or amend their constitutions or to call conventions to more thoroughly revise them. In Connecticut, Michigan, and Nebraska the Legislatures referred the question of revision to a popular vote in November, 1904.

The Massachusetts Legislature of 1903 remitted to the Legislature of 1904 a proposed constitutional amendment under which at any time an amendment proposed by 50,000 voters and approved by fifteen senators and a majority of the representatives shall be submitted to the vote of the people. If approved by a majority of the voters, it must be resubmitted at the next election: if approved by a two-thirds vote it becomes *ipso facto* a part of the constitution, but a proposal rejected cannot be submitted again for three years.

In New Hampshire by popular vote the constitution was amended so as to provide that voters and office-holders should be able to read the State constitution in English, and to write.

A proposal to permit women to hold office, and to extend the right of suffrage to them, was rejected in New Hampshire.

In New Jersey a proposal that the Governor with the consent of the Senate should appoint the judges of the Circuit Court and Court of Common Pleas and the Vice-Chancellor was rejected.

The proposed changes in the various constitutions which are pending, but which have not yet been voted upon, illustrate the trend of public feeling upon many subjects. In California it is proposed that ships or shipping engaged in foreign or domestic navigation or in fishing shall be exempt from taxation; in Connecticut, that the use of voting machines, which have been employed for some time in many States, be authorised; in Florida, that judges of county courts must be attorneys of law, that the Legislature may authorise municipal corporations to exempt manufacturing enterprises from taxation for fifteen years, and that the opinion (judgment) of the judges of the Supreme Court shall be filed before effect can be given to the judgment; in Montana, forbidding employment of children under sixteen in mines and establishing an eight-hour day on State, county, and municipal work; in New York, that the Legislature may increase the justices in any judicial district, but the number must not exceed one justice for every 60,000 inhabitants; in South Dakota, fixing the salary of the Attorney-General at $1,800; in Tennessee, authorising counties or cities to exempt new manufacturers from taxation for ten years, limiting indebtedness of counties, cities, and towns to 10 per cent. of the value of taxable property, providing for the election of the State Treasurer and Comptroller by the people (instead of by the Legislature, as at present) and extending the term of the Governor from two to four years; and in Texas, authorising the Legislature to make shareholders in public companies liable to an amount equal to the par value of their shares (in addition to the nominal value of the shares), requiring the capital stock of a company to be fully paid, and forbidding foreign corporations other than national banks to do business in the state.

The Ballot.—At present the United States Senators are elected by the Legislatures of the several States, but in no less than fourteen States in 1903 were resolutions passed requesting the United States Congress to call a Federal Constitutional Convention which should provide for a popular election of the United States Senators.

In North Dakota the franchise was extended to civilised Indians who have severed themselves from their tribal relations.

Public Health and Sanitary Laws.—The legislation relating to the health of the people has taken a very wide range and covers the regulation of the practice of medicine, the examination of trained nurses, the inspection of embalming establishments, and the education of barbers in a knowledge and practice of sanitation. In Arkansas an Homœopathic State Medical Board, an Eclectic State Medical Board, and a State Medical Board has been established, with authority to issue certificates to practise medicine. In South Dakota a similar board is to be composed of four "regular," one eclectic, and two homœopathic physicians. New York, North Carolina, and Virginia have created boards of examiners of trained nurses with authority to issue certificates to practise. Kansas, New York, Rhode Island, and

Wisconsin have appointed boards to examine barber's shops and issue licences to barbers after examination. In Connecticut, Maine, Michigan, and Texas dead bodies may be embalmed only by certificated embalmers. In Massachusetts, the State Board of Health may distribute, gratuitously, anti-toxin and vaccine lymph. In North Carolina a child may not attend school when a member of his household is ill with mumps or has itch. In Minnesota, the Board of Health and Education may not require vaccination; and in South Dakota it is a misdemeanour to compel one to submit to vaccination. In Minnesota, New Hampshire, New Mexico, and Rhode Island, indigent patients are treated in public sanitoriums for tuberculosis. Kansas, Maine, New Jersey, and Vermont have passed laws making it a misdemeanour to expectorate in street cars, churches, and other public buildings.

Labour Legislation.—In nearly every State the legislators have been busy with proposals relating to the regulation of disputes between employers and employees, workshop regulations, the comfort and health and safety of employees, and the hours and compensation of workers.

In Massachusetts the Governor is empowered to appoint a committee on the relations between employers and employees, to consist of one representative of employers, one of employees, and three other persons, to consider the employers' liability, the conduct of strikes, black-listing, and kindred subjects.

In order to promote the comfort and health of employees, Connecticut has passed laws forbidding the use of stained-glass windows in factories; California, requiring seats for women employed in factories; Wisconsin, regulating the sanitation of factories, mills, workshops, and other establishments, and requiring, where eight or more persons are employed, water-closets, dressing-rooms, and exhaust fans; in Illinois, New York, Texas, and Virginia, requiring electric tramcars to have vestibuled or covered fronts, for the protection of drivers, from November 1st to March or May; Colorado, forbidding the employment of women over sixteen in mills, factories, or shops for more than eight hours a day in any occupation requiring standing; Oregon, restricting women's hours in mechanical or mercantile establishments, laundries, hotels or restaurants, to ten hours a day; New Jersey and Washington, forbidding the employment of minors, under eighteen years in the former and sixteen in the latter State, in bakeries from 7 p.m. to 7 a.m.; and Arizona, Arkansas, Indiana, Minnesota, and Texas, compelling railway companies to allow eight to nine hours' rest to employees who work sixteen consecutive hours.

A large number of States have passed laws restricting working hours to eight hours a day, particularly upon public works. But it is of interest to note that in New York (*People* v. *Orange County Road Construction Co.*, 67 N.E. 129) and in Ohio (*City of Cleveland* v. *Clements Bros. Construction Co.*, 65 N.E. 885) such laws have already been decided to

be unconstitutional, so far as they discriminate between public and private contracts.

In Kansas, Minnesota, Nevada, and Oregon it has been made a misdemeanour to make an agreement not to join or to remain a member of a labour organisation a condition of employment.

Eminent Domain.—The power of public corporations to acquire lands for public uses under rights similar to those afforded by the Lands Clauses Acts of this country is known in America as the right of "eminent domain." It is significant of the growth of electric traction and telephones that in many of the States the powers heretofore restricted by the Legislatures to railway companies have been extended to electric tram companies in order to enable such companies to extend their system, and chiefly by leaving the highways and traversing private property to link up towns and villages. In California, North Carolina, and Oregon these powers have been extended to telephone companies and those organised for the transmission of electric power.

Administration of Justice.—To overcome the delays in the appellate courts, Montana has provided for three commissioners to sit as additional appeal judges for four years. In eleven States the salary of judges has been increased, but there is still great disparity in their pay. For instance, in South Dakota the Supreme Court judges receive only $3,000, while in the neighbouring States of North Dakota and Wyoming it is proposed to fix the salaries of judges of the same rank at $5,000. In several States the terms for which the judges are elected has been materially increased —in West Virginia from four to twelve years—but unfortunately there is no indication of taking away from the people the power of electing the judiciary or of making the term a life one. On the contrary, as will be noted *supra*, a proposal in New Jersey that the Governor, with the consent of the Senate, should appoint the judges of the Circuit Court and the Court of Common Pleas was rejected. In Rhode Island a law has been passed permitting a judge to retire at sixty-five upon full salary.

BRITISH EMPIRE.

I. UNITED KINGDOM.[1]

[*Contributed by* J. M. Lely, Esq.]

Acts passed—Public 47; Local and Personal, 263; Private 2.

Forty-seven public Acts of Parliament (of which four were confined to England and six to Ireland) became law in the session which was prorogued on August 14th, 1903. The following is a short account of the most noteworthy of them. The letters B.E., U.K., E., S., and I. signify application to the British Empire, the United Kingdom of Great Britain and Ireland, England (including in England Wales by virtue of the Wales and Berwick Act, 1746), Scotland, or Ireland respectively.

Continuance of Temporary Acts.—The Expiring Laws Continuance Act, c. 40 [U.K.], continued, until December 31st, 1904, thirty-six principal and fifty-five temporary Acts, amongst them being the four-times amended Irish Linen Act of 1835, the Poor Rate Exemption Act of 1840 [E.]; the Promissory Notes Acts of 1863 and 1864 [E., I.]; the Militia Ballots Suspension Act of 1865 [U.K.]; the Locomotives Act of 1865 [U.K.]; the Ballot Act of 1872 [U.K.]; the Employers' Liability Act of 1880 [U.K.]; the Crofters' Holding (Scotland) Act of 1886; the Welsh Intermediate Education Act of 1889; the Local Government Elections Act of 1896 [E.]; and (for the first time) the Vaccination Act of 1898, which would otherwise have expired on the last day of the year 1904, and has by the Expiring Laws Continuance Act, 1904, been again continued for another year.

Army and Navy.—The Army (Annual) Act c. 4 [B.E.], continued the Army Act (which first took the place of the annual Mutiny Acts some twenty years ago) for one year more, and legalised a standing army of 235,761 men (exclusive of those actually serving in India), as against the 420,000 legalised by the corresponding Act of 1902.

[1] This article is mainly a reprint of two articles in *The Times* of January 1st and 30th, 1904, on "Legislation of the Year 1903," the first article summarising the legislation for England and Wales, and the second that for Scotland.

The Military Lands Act, c. 47 [U.K.], enables county and borough councils to hire lands at the request of one or more Volunteer corps for not less than twenty-one years.

The Military Works Act, c. 29 [B.E.], authorised an expenditure up to £5,000,000 (to which a sum up to £500,000 realised by the sale of existing unnecessary barracks could be added) on defence works, barracks (including £2,300,000 on barracks in South Africa), ranges, and "staff and contingencies."

The Naval Works Act, c. 22 [B.E.], authorised an expenditure up to £7,996,000 on (1) enclosure and defence of harbours at Gibraltar, Portland, Dover, and Malta; (2) adapting naval ports to needs of the fleet at Keyham, Hong-Kong, Sheerness, and other places; and (3) "Naval Barracks, etc.," including gunnery schools, magazines, torpedo ranges, and hospitals; and the Naval Forces Act is intended greatly to strengthen the Naval Volunteer Reserve by removing the existing statutory restrictions on its numbers (30,000 under an Act of 1859, and an additional 15,000 under an Act of 1900) and by authorising employment in the Navy for a shorter term than twelve years on conditions of completing that term in the reserve.

Child Employment.—The Employment of Children Act, c. 45 [U.K.], came into operation on January 1st, 1904. For its purposes "child" means a person under fourteen; "employment" includes employment in any labour exercised by way of trade or for gain, whether to the child or any one else; "local authority" means in England the Common Council in the City of London, the council of a borough with a population of over 20,000, or the county council; in Scotland (though not for all purposes) the school board; and in Ireland, in an urban district with a population of over 10,000, the district council, and elsewhere the county council; and "street trading" includes "the hawking of newspapers, matches, flowers, and other articles, playing, singing, or performing for profit, shoe-blacking, and any other like occupation carried on in streets or public places." It is of great importance to bear these definitions in mind, and also the fact that though "child" means a child under fourteen where no special age is mentioned, there are special provisions affecting children under the ages of ten, eleven, and sixteen respectively.

Any local authority may (*not* must) by by-law prescribe ages and hours of employment for all children as to all occupations or any occupation, may prohibit or only conditionally permit the employment of children in any specified occupation, and may regulate street trading by persons under sixteen, having special regard to the employment of girls therein. Subject to variation of hours by by-law, no child is to be employed between 9 p.m. and 6 a.m. No child under eleven is to be employed in street trading, no half-timer under the Factory Act is to be employed in any other occupation, and no child is to be employed in any occupation likely to be

injurious to him, a medical certificate as to likelihood of injury being made admissible evidence.

By-laws will require confirmation by the Secretary of State, who is not to confirm them until at least thirty days after publication by the local authority, and also after considering any objections which may be addressed to him by persons affected, a discretionary power to order a local enquiry being given. Employment in contravention of the Act is summarily punishable by fine up to 40*s*., or in the case of a second or subsequent offence £5; parents or guardians conducing to the offence by default or neglect being liable to the like fines, agents or workmen offending being liable as if they were employers, and employers (as under the Factory Act) being entitled to exempt themselves on proof that they had used due diligence to comply with the Act, and that some other person committed the offence without their knowledge or connivance. The general limitation of six months after an offence within which summary proceedings must be commenced, is reduced to three, and any justice of the peace may authorise an officer of the local authority to enter a place of employment for the purpose of detection, if it appears that there is reasonable cause to believe that a child is being there employed in contravention of the Act.

By-laws under the Act are not to apply to any child above twelve employed under the Factory Act or the Mines Regulation Acts; but the regulation by the Cruelty Act of 1894 of the employment of children in public entertainments becomes subject to considerable amendment. S. 3 of that Act—by which the general restriction of the employment of children under eleven is mitigated by the authorisation of a petty sessional (or in Scotland a school board) licence for the employment of any child under seven—is amended by prohibiting the grant of a licence to any child under ten, and by investing any officer charged with the execution of the new Act with all the powers of a factory inspector under that Act to enter and examine any place of public entertainment.

County Courts.—Sir Albert Rollit's County Courts Act, c. 42 [E.]—"supported" by Sir Henry Fowler in the House of Commons and brought forward by Lord Avebury in the House of Lords—came into operation on January 1st, 1905. It extended the jurisdiction of county courts from £50 to £100, and also altered the number of county court jurors from five to eight.

Criminal Law.—Mr. Bousfield's Poor Prisoners' Defence Act, c. 38 [E.] (backed also by Mr. Cripps, Sir J. Leese, Mr. Perks, Mr. Kimber, Mr. Atherley-Jones, Mr. Marshall-Hall, and Mr. Duke), which passed on August 14th, 1903, and came into force on January 1st, 1904, enacts that where it appears that "it is desirable in the interests of justice" that a prisoner "should have legal aid in the preparation and conduct of his defence, and that his means are insufficient to enable him to obtain such aid," either the committing justices on committal,

or the judge of assize or chairman of quarter sessions at any time after reading the depositions, may certify that he ought to have such aid, with the result that he will be entitled to have solicitor and counsel assigned to him. The original intention was to follow the precedent of the Tudor Act, by which civil actions have long been prosecuted and defended on behalf of paupers by unpaid lawyers; but the Act directs that all expenses, including the fees of solicitor and counsel, are to be allowed and paid in the same manner as the expenses of a prosecution for felony, subject, nevertheless, to rules which "may be made in the same manner and subject to the same conditions as rules under the Prosecution of Offences Act, 1879"—that is, by the Attorney-General with the approval of the Lord Chancellor and a Secretary of State—after a draft has been before each House of Parliament for not less than forty sitting days, and to regulations as to rates of payment which may be made by a Secretary of State alone at any time. The rules, therefore, could not possibly have come into force during the winter circuit, whereas the regulations might easily have been made in time for them, and were in fact made on December 30th, 1903, and followed by rules made and duly laid before Parliament in the spring of 1904.

Education.—The Education, Act c. 10 [E.], empowers any local education authority, *i.e.* any county council, county borough council, or council of a borough or urban district with a population over 10,000 or 20,000 respectively, to borrow with the consent or sanction of the Local Government Board such sums as, in the opinion of the Board, are required to provide a working balance for carrying the Act of 1902 into effect.

The Elementary Education Amendment Act, c. 13 [E.], of Mr. Heywood Johnstone (supported by Mr. Haldane, Sir W. Houldsworth, Sir J. Leese, Mr. V. Gibbs, Sir G. Bartley, the late Mr. Leigh-Bennett, Mr. Bond, Mr. B. Jones, and Dr. Farquharson) enables the Board of Education to make rules for certifying any establishment for boarding and lodging defective or epileptic children, although such establishment may exceed the limit of fifteen children or four buildings required by the Elementary (Defective and Epileptic) Children Act, 1899. Rules under the Act have to be laid before Parliament, and either House may annul them within thirty days after their submission to Parliament.

The Education (London) Act, c. 24, did not come into operation until May 1st, 1904, or such other day, not being more than twelve months later, as the Board of Education might appoint. By five short sections, with modifications expressed therein and in a schedule of eleven short paragraphs, the Act of 1902, which abolished the school boards elected *ad hoc* by the cumulative vote and substitutes for them county and other councils elected by single voting for the discharge of general municipal functions, is extended and applied to London "so far as applicable." The principal modifications of the Act of 1902 are these. The number of managers of elementary

schools provided by the County Council, and the manner of grouping schools under one body of managers within any borough, after consultation with the County Council and approval by the Board of Education, are to be determined by the council of the borough. The site of any new school to be so provided is not to be determined upon until after consultation with the County Council. "Due regard shall be had in selecting managers to the inclusion of women in the proportion of not less than one-third of the whole body of managers, and, in the case of the first body of managers, also of members chosen from the then existing body of managers." Managers are not to be appointed for more than three years, but are to be re-eligible. The limit under the Act of 1902 of the rate for the purpose of higher education to *2d.* in the pound is not to apply where the County Council delegate any powers to their Education Committee, and the proceedings of such Committee are not required to be submitted to the Council for approval; the minutes of the Committee are to be subject to the same inspection by the ratepayers as the minutes of the Council itself are.

Fisheries.—The Board of Agriculture and Fisheries Act, c. 31 [E.], transfers to the Board of Agriculture, which was established in 1889, all the powers and duties of the Board of Trade under nearly thirty Freshwater and Sea Fisheries Regulation Acts, and directs that the Board of Agriculture is to be styled the "Board of Agriculture and Fisheries."

Intoxicating Liquors.—The Licensing (Scotland) Act, c. 25, is the result of a fusion of two distinct bills, the one purely amending, and the other purely consolidating—a very commendable mode of procedure in cases where amendment accompanies consolidation, which has already been pursued with advantage in the cases of the Lunacy Act of 1894 and the Factory Act of 1901. The Act, which contains one hundred and seven sections and twelve schedules, came into operation on January 1st, 1904. It bodily incorporates, with some amendments and necessary adaptations to Scots law, the provisions of the English Act of 1902 for prevention of drunkenness, formation of "black lists," and registration of clubs; it adds a few provisions of its own, and consolidates the whole Scots law of licensing by the repeal of the Home Drummond Act of 1828, the Forbes Mackenzie Act of 1853, the Publicans' Certificates (Scotland) Act of 1876 (expressly passed to assimilate Scots to English law), and four other Acts. The main distinctions between the law of the two countries—that in Scotland there are no houses with the impregnable position of pre-1869 beerhouses; that inns are licensed distinctively from public-houses, that Brewster sessions are held half-yearly instead of yearly, and that unlicensed drinking is an offence in buyer as well as seller—are still preserved; and a few new distinctions have been added. The most important is that the principle of popular control has been introduced into the Licensing Courts, for the purposes of both original and appellate jurisdiction, by the enactment that—

> For each county, or, where a county is divided into licensing districts, for each licensing district, there shall be a separate Licensing Court. . . . One-half of the members of such Court shall in every case be elected by the justices of the peace for the county from their own number. . . . For the purpose of hearing appeals and applications for confirmation of new certificates . . . there shall be a Court of Appeal, one-half of which shall in every case be elected by justices of the peace from their own number, and one-half shall be burgh magistrates or county councillors respectively, as hereinafter provided.

The licensing meetings are to be held in April and October, the grant of new licences requiring confirmation, but the refusal of them not being appealable, and renewals not being refusable without a hearing in open Court. The licences commence on May 28th, or November, and continue in force only until May 28th following.

By-laws of the Licensing Courts may require innkeepers and publicans to close their premises on New Year's Day—a very festive day in Scotland—"and on such other days, not being more than four in any one year, as the Court may deem fit for special reasons," and also to "keep, and from day to day renew, a sufficient supply of drinking water and eatables." These and other newly authorised by-laws will require confirmation by the Secretary for Scotland, and may be formally objected to by persons interested.

The distribution of liquor from vans, which had practically become travelling public-houses, is sharply checked by a series of elaborate provisions. No van containing liquor is to leave licensed premises except for the purpose of delivery to a customer who has expressly ordered it, as evidenced by entries both in a delivery-book and in a day-book. Any such van may be examined by a constable at any time, and delivery to any person except in pursuance of an express and registered order is made unlawful. Thus at length has been dealt with an evil protested against by a Royal Commission more than forty years ago.

The management of the drunkard is somewhat different from that in the English Act. The power to apprehend is given, but it is expressly confined to a constable, the enactment on the subject running thus:—

> Every person found in a state of intoxication, and incapable of taking care of himself, *and not under the care or protection of some suitable person* [this curious salvo is imported from the Burgh Police Act of 1892, and did not appear in the original bill] in any street . . . may be taken into custody by any constable, and detained . . . and not later than the first lawful day after he shall have been so taken into custody shall be brought before a sheriff or any one justice of the peace or magistrate.

This (with the exception of the introduction of the "suitable person") is better than the vague English enactment that the offender is to be "dealt with according to law." The "black list" also is arranged for so differently that the unfortunate rule of *Donovan's Case*, by which the drunkard

may not be listed without his consent, is probably not good law in Scotland.

If an innkeeper sells liquor on Sunday to a traveller, except for consumption by the traveller himself, he is to be deemed guilty of a breach of his licence. The law of the *bona fide* traveller has had to be thus newly shaped in order to neutralise the rule of *Oliver's Case*, in which a Scots Court, upsetting the magistrates in more senses than one, had contrived to hold that any traveller in the legal sense might legitimately stand treat to non-travellers all round.

There are more bogus clubs and fewer working-men's clubs in Scotland than in England, and the Scots Act has handled clubs with greater strictness accordingly. Registration of a club may be objected to, and is not to be obtainable unless the rules contain ten specified provisions. Of these the most important are to the effect that no member of the committee is to have any personal interest in the sale of liquor; that there shall be a defined subscription payable in advance; that a visitor shall not be supplied with liquor unless on the invitation and in the company of a member, who is to enter his own name and the name and address of the visitor in a book kept for the purpose; and that no person under eighteen shall be a member "unless the club is primarily devoted to some athletic purpose," and even in that case is not to be supplied with liquor. The grounds of objection to a grant or renewal of registration—either for paucity of members, or for frequency of drunkenness, for illicit sales, or for habitual admission of outsiders merely to obtain liquor, or other malpractices—are similar to those for which a club may be struck off the register in England, and similarly render the club liable to be struck off the register. The penalty for supplying liquor in an unregistered club is as in England—imprisonment, with or without hard labour, for not more than one month, or a fine up to £50, "or both."

Holidays.—The Bank Holidays Act, c. 1 [I.], adds the 17th of every March to the list of Bank Holidays in Ireland.

Land.—The Irish Land Act, c. 37, which came into operation on November 1st, 1903, is designed to complete a series of enactments (of which part of the Gladstone Act of 1870 was the earliest and the Ashbourne Act of 1885 the most successful) passed to convert agricultural tenants into owners by purchase with money advanced by the State and repayable by easy instalments. The Act is not compulsory, any more than were its predecessors, nor does it, any more than they did, prevent the new owners which it will create from themselves becoming landlords in their turn to a new set of tenants. But it is much more largely inducive, and its provisions may be taken advantage of by a greater number of persons. Not only a tenant, but any son of a tenant on an estate, any tenant or proprietor of neighbouring land not exceeding £5 in ratable value, and any person who has been a tenant within twenty-five years before the

passing of the Act has a *locus standi* to apply for an advance of purchase-money with a right to obtain it for judicially rented land, and a probability of obtaining it for land not so rented. On the other hand, landlords of all kinds, including owners for life only (whether their trustees consent or not), are landlords within the meaning of the Act, and potential vendors. Five-sixths of Ireland (so Mr. Wyndham stated in the House of Commons) will be subject to the operation of the Act; the outside sum advanceable being one hundred millions to be spread over a period of at least fifteen years. The advances are to be repaid by means of purchase annuities calculated at the rate of £3 5*s*. for every hundred pounds advanced. For the purpose of aiding the sale of estates, the Land Commission will pay a bonus of 12 per cent. on the purchase-money. If the estate was so encumbered that the vendor was receiving no income from it, this bonus will be distributed among the encumbrancers; if not, the vendor will receive it for his own use—and perhaps even be entitled to the capital, although he be only the tenant for life of a settled estate.

The moneys required to provide this bonus (up to twelve millions) are taken out of an "Irish Land Purchase Aid Fund" raised by the issue of a 2¾ per cent. Government stock, the dividends on which are to be provided by Parliament. Landlords as well as tenants may take advantage of the Act by sales to the Land Commission in cases where re-sales to a three-fourths extent to tenants can be effected. Reservations of sporting rights exclusive of tenants' may be continued to landlords or transferred to tenants by express agreement, but in the absence of such agreement they will become vested in the Land Commission. Mining rights, with certain exceptions, are to be reserved exclusively to the Land Commission, to be disposed of by that body "in manner hereafter to be provided by Parliament."

Such are the leading features of the elaborate Statute which has been passed, as described in the Royal Prorogation speech, "to expedite the conversion of agricultural tenancies into occupation ownerships throughout Ireland, in a form which offers inducements towards the continued residence of landowners among their countrymen," and to promote a reform which, "by removing ancient causes of social dissension," will, it may be trusted, "conduce to the common benefit of all the King's Irish subjects."

Local Government.—The County Councils (Bills in Parliament) Act, c. 9 [E., S.], by extension of the Local Government Acts of 1888 and 1889 respectively, confers on county councils a power of promoting bills in Parliament in addition to the existing power under those Acts of opposing them. The Borough Funds Act [E.] greatly amends the procedure under the Borough Funds Act, 1872 (commonly called "Leeman's" Act), by which borough and urban district councils may promote bills in Parliament, but newly gives such councils a free hand in opposing bills without the consent of owners and ratepayers as required by the Act of 1872. In

relation to the promotion of a bill, no expense is to be charged by the council upon their constituents without full notice given within seven days from the first deposit of the Bill in either House of Parliament and without the sanction of a public meeting of electors, to whom the chairman is to give such explanation of the bill as he thinks expedient. The decision of the meeting is to be final unless a poll is required by not less than a hundred electors, or one-twentieth of their number, or by the council if the meeting decide against the resolution proposed.

The Local Government (Transfer of Powers) Act, c. 15 [E.], though permissive only, may turn out to be the most important Act of the Session. General, tentative, unused, and almost unknown powers of decentralisation have long been entrusted to the Local Government Board by an enactment of the Local Government Act, 1888, that "It shall be lawful for the Local Government Board to make . . . a Provisional Order for transferring to county councils any such powers . . . of the Privy Council, a Secretary of State, the Board of Trade, the Local Government Board, the Board of Education, or any other Government department as are conferred by or in pursuance of any statute and appear to relate to matters within the county and to be of an administrative character . . . and such order shall make such exceptions and modifications as appear to be expedient."

The order is directed to be laid in draft before the Government department concerned for approval and requires confirmation by public Act of Parliament. The new Act, without repealing the above enactment of 1888, directs that it shall have a particular as well as a general application —that is, that it shall authorise the transfer of the powers mentioned in the Act of 1888 to the council of a particular county or county borough as well as to such councils generally. The order, however, cannot be made except on the application of the county to be affected, and is not to be proceeded with in case of objection by a majority of those borough or urban district councils, rural district councils, boards of guardians within the area proposed to be affected, to which the Board is directed to give notice of the proposed transfer, as being in the opinion of the Board likely to be affected by it. An application under this potentially momentous Act may be made by any county council or county borough council at any time.

The Burgh Police Act, c. 33 [S.], directing the town council of every burgh to cause a register of its streets to be prepared, authorises the planting of trees in streets and the erection of buildings in parks, directs that all vehicles must carry lights, penalises overcrowding and street betting, regulates the manufacture of ice-creams, provides for openings in squares, regulates sky-signs and advertising sites, and recasts the law of licensing theatres, music-halls, and billiard-rooms.

The Town Councils Act, c. 34 [S.], amends the Scots consolidating Town Councils Act of 1900 by admitting sheriff substitutes and sheriff clerks to

the franchise, and by providing for the alteration of the date of the annual elections in fishing burghs "where many electors are often absent from home in pursuance of their occupation" at the statutory date (the first Tuesday of November) of such elections.

London Street Collections.—The Metropolitan Streets Act, c. 17 [E.], enables the Commissioner of the Metropolitan Police with the approval of a Secretary of State, and the Commissioner of the City Police with the like approval and also with the consent of the Lord Mayor and Aldermen, to make regulations to be observed within a six-mile radius from Charing Cross with respect to the places where, and the conditions under which, persons may collect money in any street for charitable or other purposes.

Marine Stores, etc.—The General Dealers Act, c. 44 [I.], regulates, by a licensing system and otherwise, the business of dealers in marine stores and second-hand goods, the Statute being the Irish version of English and Scots enactments long ago found separately necessary, in addition to the protection uniformly accorded to the three countries by the general law of merchant shipping.

Mines.—The Coal Mines (Certificates) Act, c. 7, [U.K.] of Mr. S. Evans, supported by Mr. Burt, Sir J. Joicey, Sir W. Tomlinson, Sir A. Thomas, and Mr. Abraham (Rhondda), amends a provision of the Coal Mines Regulation Act of 1887, which makes at least five years' practical experience an essential qualification for a manager's or under-manager's certificate. There is a substitution of three for five years in cases where the applicant has studied for at least two years at any educational institution to be approved of by a Secretary of State, or has taken a degree of any university to be so approved of which includes scientific and mining subjects.

Motor-Cars.—The Locomotives on Highways Act, 1896, defines a "light locomotive" as—

> Any vehicle propelled by mechanical power if it is under three tons in weight unladen and is not used for the purpose of drawing more than one vehicle (such vehicle with its locomotive not to exceed in weight, unladen, four tons), and is so constructed that no smoke or visible vapour is emitted therefrom except from any temporary or accidental cause.

The Motor-Car Act, c. 36, [U.K.], which came into operation on January 1st, 1904, and is limited to expire on December 31st, 1906, gives to "motor-car" the same meaning as that of "light locomotive" in the above enactment, except that (1) for the purpose of new registration provisions "motor-car" is not to include a vehicle drawn by a motor-car; and (2) the weights mentioned therein may be increased as respects any class of vehicle by Local Government Board regulations.

The reckless, negligent, or too rapid driving (at whatever speed) on a public highway or roadway to which the public are granted access is an

offence under the Act, and any police constable may apprehend without warrant a driver who has offended within his view if he refuses to give his name and address or produce the licence required by the Act, or if the car cannot be identified under the Act. Every car must be registered with the council of a county or county borough, with a separate number and mark indicating it fixed on the car or vehicle drawn by it, or both, and on payment of a fee of 5*s.* each for motor-cycles and 20*s.* each for other cars. Manufacturers and dealers may obtain general identification marks for use on trial. As to licences, it is enacted that—

A person shall not drive a motor-car on a public highway (or roadway to which the public are granted access) unless he is licenced for that purpose, and a person shall not employ any person who is not so licensed to drive a motor-car.

The council of a county or county borough shall grant a licence to drive a motor-car to any person applying for it who resides in that county or county borough on payment of a fee of 5*s.*, unless the applicant is disqualified under the provisions of this Act.

The only absolute disqualifications are (1) being under seventeen years of age, or, for driving motor-cycles only, of fourteen years or under; and (2) already holding a licence still in force. But a person convicted of an offence under the Act, or of any offence in connection with the driving of a motor-car (other than a first or second offence consisting solely of exceeding any limit of speed fixed under the Act) may be declared to be disqualified by the Court before whom (*sic*) he is convicted for a period limited only by the discretion of the Court. The fine for any offence under the Act may be up to £20, or in the case of a second or subsequent conviction up to £50, with the alternative of imprisonment up to three months, but there will be an appeal to quarter sessions against (1) imprisonment, (2) any fine above 20*s.*; and (3) any order of disqualification.

The enforcement of the maximum speed of fourteen miles an hour under the Act of 1896 (as reduced by Local Government Board regulations under that Act to twelve miles an hour) is replaced by the enactment that—"A person shall not under any circumstances drive a motor-car on a public highway or roadway to which the public are granted access at a speed exceeding twenty miles an hour, and within any limits or place referred to in regulations made by the Local Government Board with a view to the safety of the public on the application of the local authority of the area in which the limits or place are situate, a person shall not drive a motor-car at a speed exceeding ten miles an hour."

Contravention of this enactment is punishable by a fine up to £10 for a first offence, £20 for a second, and £50 for any subsequent offence; but there cannot be a conviction merely on the opinion of one witness nor unless the offender was warned of an intended prosecution at the time of the offence, or unless notice of it was sent to him or to the registered owner of the car within reasonable time after the commission of it. The

Local Government Board may also prohibit or restrict the driving of any motor-car on any highway which does not exceed sixteen feet in width, "or on which ordinary motor-car traffic would in their opinion be especially dangerous." Local authorities are to give public notice of any such prohibitions or restrictions or limitations of speed, and also "subject to regulation as to size and colour" to be made by the Board, to set up signposts denoting dangerous corners, cross-roads, and precipitous places. In case of accident to any person or to a horse or vehicle in charge of any person, owing to the presence of a motor-car on a road, the driver is directed to stop and give his and the owner's name if required, on pain of a fine up to £10 for a first offence, £20 for a second, and £20 for any subsequent offence, or imprisonment up to one month. All common law and statutory liabilities of owners are expressly left unaffected—a very extensive saving in view of the wide civil liability for negligence and of the direction of the Act of 1896 that a motor-car, or "light locomotive" as it is there called, is to be deemed a "carriage" within the meaning of any Act whatever—and both the Act of 1896 and the new Act are declared to apply to persons in the public service of the Crown.

The Light Locomotives (Ireland) Act [I.], which expired with the year 1903, provided that the county councils might, on the application of any persons or club, by order containing provisions for the safety of the public declare that any public road might be used for motor-car races during the whole or part of any specified days not exceeding three in the year.

Patriotic Fund.—The Patriotic Fund Reorganisation Act, c. 20 [U.K.], reorganises the administration of the fund by entrusting it to a body corporate consisting of twelve members appointed by the Crown, the Lords Lieutenant of counties, the chairmen of the county councils, the mayors of county boroughs in England, Wales, and Ireland, and the provosts of Scots burghs with a population up to 50,000, and co-opted members up to the number of seven.

Pistols.—The Pistols Act, c. 18 [E., S.], of Mr. Helme, supported by Mr. M. W. Ridley, Mr. H. Gladstone, and Mr. Stuart Wortley, makes it unlawful to sell or let a pistol (except an antique sold for curiosity or ornament) to any person not producing a gun or game licence or proving that he is entitled to carry a gun without a gun or game licence for scaring birds or otherwise under the Gun Licence Act, or that being a householder he will either use the pistol only at home or is about to go abroad for not less than six months, and produces a vouched statement to that effect. An entry of each sale or letting must be made in a book to be produced for inspection on the request of any officer of police or Inland Revenue. Any person contravening any of these provisions may be fined up to £5, and a similar fine may be incurred by any person selling or delivering a pistol to any person under the age of eighteen not legally liable for carrying a gun without a gun or game licence, the young person himself

being liable up to £5 for buying, hiring, using, or carrying the pistol, as to the forfeiture of which the Court inflicting the fine may make such order as may seem fit. Lastly, any person who knowingly sells a pistol to any person intoxicated or not of sound mind may be fined up to £5 or be imprisoned with or without hard labour up to three months.

Poor.—The Poor Law (Dissolution of School Districts and Adjustments) Act, c. 19 [E.] (which was elaborately explained in a Local Government Board circular addressed to clerks of guardians soon after the passing of the Act), applies to England generally the power of the Local Government Board given as respects London in 1869 to dissolve the poor law school districts authorised to be formed by the Poor Law Amendment Act of 1844. The Act also enables any adjustments of property, income, and liabilities, so far as affected by any alteration of poor law areas or authorities, to be settled by agreement between the authorities concerned, or in default of agreement by arbitration, instead of by the Local Government Board.

Railways.—The Railways (Electrical Power) Act, c. 30 [U.K.], empowers the Board of Trade on the application of any railway company, and "with the object of facilitating the introduction and use of electrical power on railways," to make orders for all or any of the purposes specified in the Act. These purposes are—(1) the use of electricity besides or instead of any other motive power; (2) construction of electrical works on the company's land; (3) the supply of electrical power or plant by agreement with some other company; (4) consequential modification of working agreements; (5) subscription by the railway company to any electrical undertaking; (6) the public safety; (7) the issue of new capital; and (8) regulation of any ancillary matters. Orders may authorise the acquisition of land, but an order authorising such acquisition compulsorily will require confirmation by Act of Parliament, and before making any order the Board of Trade must be satisfied that public notice of the application for it has been given, and must consider any objections by "the council of any county, any local authority, or other person" and give to those by whom the objection is made an opportunity of being heard with the view of declining to make the order or of so modifying it as to remove the objection, if the Board decide that the objection, should be upheld. Independent powers of the companies are expressly saved; and it may be pointed out that the Railways Clauses Consolidation Act, 1845, which applies to the vast majority of the lines, empowers every company to which it applies "to use and employ locomotives, engines, or other moving power, and carriages and waggons to be drawn or propelled thereby." The electrification of steam railways, which has been already adopted on many lines, as between Newcastle and Tynemouth and Liverpool and Southport, may perhaps make rapid strides, even to the extent of realising the late Sir Frederick Bramwell's remarkable prediction of 1881 as enunciated by Mr. Charles Hawksley at the British Association meeting of September, 1903 (see *The Times* of

September 11th), that the scientists of thirty years hence would in all probability never speak of a steam engine except in the character of a curiosity to be found in a museum. And Mr. Hawksley added that to keep alive the interest of the association in this subject Sir Frederick had kindly offered, and the Association had accepted, the sum of £50 for investment in 2½ per cent. Self-accumulative Consols, to be paid as an honorarium to the writer of a paper having Sir Frederick's utterances in 1881 as a sort of text, and dealing with the prime movers of 1931, especially with the then relation between steam engines and internal combustion engines.

Revenue.—The Finance Act, c. 8 [U.K.], repealed as from July 1st, 1903, the small duties on corn and flour imposed by the Act of 1902, continued the duty on tea at 6*d.* in the pound, and continued also the additional duties of customs on tobacco, beer, and spirits, and of excise on beer and spirits imposed by the Act of 1900, all until August 1st, 1904. Income-tax for the year beginning on April 6th was charged at the rate of 11*d.*—a reduction of 4*d.* The Act did not pass till June 30th, and for the necessary meeting of the case of the tax falling due between April 6th and that day a startling incorporation by reference has been employed. S. 10 of the Customs and Inland Revenue Act, 1883 (which reduced the tax from 6½*d.* to 5*d.*, and having been properly repealed by a Statute Law Revision Act as temporary has been properly omitted both from the Statutes Revised and Chitty's Statutes), was "applied with respect to the year which commenced on April 6th, 1903, as it was applied with respect to the year which commenced on April 6th, 1883, and as if it were re-enacted in this Act with the necessary change of date." Seldom, if ever, has the mischievous spirit of allusive legislation played upon the public a more irritating trick than this, even in those Acts as to which Sir William Harcourt some eight years ago in the House of Commons declared that—"Customs and Inland Revenue Acts are very far from being drawn so that he who runs may read. If there is a subject which can exercise the human intellect more than high analytical mathematics, it is the Bills of the Inland Revenue. They are like the secrets of an ancient order, which were kept by those who had to administer them."

The Revenue Act, c. 46 [U.K.], which came into operation on September 1st, 1903, contained a series of provisions for the relief of the taxpayer, the most important being as follows: The duty on imported molasses to be used solely for feeding stock became no longer payable if such conditions as may be imposed by the Commissioners of Customs for the protection of the revenue are complied with. The bond for the due exportation of coal or its carriage coastwise became exempt from stamp duty. A policy of insurance on a ship whilst under construction or on repair, if stamped as a voyage policy, became sufficiently stamped, though made for more than twelve months, and is not to be deemed a sea policy for time; and the stamp duties of 30*s.* and 5*s.* on Army and Navy commissions ceased to be payable. The house duty on houses let in tenements or flats as separate dwellings

was made subject to the abatement and reductions that the value of a dwelling of less value than £20 annual value is excluded from the calculation of the duty on the house, and the rate of duty between values of £20 and £40 or £40 and £60 is reduced from 9*d.* in the pound to 3*d.* and 6*d.* respectively. The reductions by virtue of a proviso borrowed from an Act of 1890 are not to take effect without the production to the Tax Commissioners of a certificate by the medical officer of health of the district that the house is so constructed as to afford suitable accommodation for each of the families or persons inhabiting it, and that due provision is made for their sanitary requirements. The professional assistance on income-tax appeals to the General Tax Commissioners given to the taxpayer in 1898 with the risk of those Commissioners refusing to hear the professional representative, became ensured by a provision that if such Commissioners "refuse to permit a barrister or solicitor to plead before them or to hear any accountant being a member of an incorporated society of accountants, the appellant may withdraw and appeal to the special Commissioners, who are hereby required to hear the barrister, solicitor, or accountant," and might therefore be compelled by mandamus to grant the required hearing.

Sheep Scab.—The Diseases of Animals Act, c. 43 [U.K.], extends the very numerous powers of the Board of Agriculture to make orders under the Act of 1894 for the better prevention of disease among animals to a power to prescribe, regulate, and secure the periodical treatment of all sheep by effective dipping or by the use of some other remedy for sheep scab. Inspectors of the Board, and, if so ordered by the Board, of the local authority, may enter any premises and examine any sheep therein, and owners and shepherds are directed to comply with all their reasonable requirements. The local authorities are empowered to provide portable dipping tanks, or, with the sanction of the Board, dipping places, and to allow public use of them; but no dipping place is to be used to the detriment of water for drinking or other domestic purposes.

South African Loan.—The South African Loan and War Contribution Act, c. 27 [B.E.], empowers the Treasury to guarantee interest at not more than 3 per cent. on any Transvaal loan up to £35,000,000 for the purposes mentioned in the Act, with the amounts applicable to each purpose—*e.g.*, for compensating loyalists in Cape Colony and Natal, £2,000,000; for acquisition of existing railways in the Transvaal and Orange River Colony, £14,000,000; for repatriation and compensation in those Colonies, £5,000,000; and for new railways, land settlement, and other new public works therein, £10,000,000.

Sugar Convention.—The Sugar Convention Act, c. 21 [U.K.], gives effect to the International Convention against bounty-fed sugar by the enactment that "where it is reported by the Permanent Commission [established by the Convention] that any . . . bounty is granted in any foreign country on the

production or export of sugar, his Majesty may . . . make . . . an order prohibiting sugar from that foreign country to be imported into the United Kingdom. . . ."

An Order in Council prohibiting the importation of all sugar from Denmark, Russia, and the Argentine Republic, not including molasses and sugar-sweetened products, was in due course made and will be found in *The Times* of August 13th, 1903, together with another Order in Council also authorised by the Act, that every sugar factory and sugar refinery, and factory for the extraction of sugar from molasses, in the United Kingdom shall be under the supervision either of the Commissioners of Customs or of Inland Revenue.

Workmen's Housing.—The Housing of the Working Classes Act, c. 39 [E.], substitutes eighty for sixty years as the maximum period for which a loan may be sanctioned by the Local Government Board for housing purposes, authorises the transfer of any powers of the Home Office respecting them to the Local Government Board, and imposes a set of rehousing obligations to operate for the provision of dwelling accommodation for persons of the working-class in cases where land is acquired under statutory powers. For the purpose of these obligations, the expression "working-class" includes—

> Mechanics, artisans, labourers, and others working for wages; hawkers, costermongers, persons not working for wages, but working at some trade or handicraft without employing others, except members of their own family, and persons other than domestic servants whose income in any case does not exceed thirty shillings a week, and the families of any such persons who may be residing with them.

If more than thirty such persons are threatened with displacement, the company or authority armed with statutory powers is debarred from exercising them until the Local Government Board have either approved a housing scheme or decided that it is not necessary.

It is also enacted that on failure of local authorities to make schemes for rebuilding on unhealthy areas, confirming authorities may order them to make such schemes; that, if the cost of demolishing too old houses will not be reimbursed by the sale of materials, the deficiency may be recovered from the owners; that cleared land may be utilised for shops and recreation grounds as well as for dwellings; and that the implied statutory condition for fitness in the letting of houses at certain low rents is to take effect notwithstanding any stipulation to the contrary.

2. ISLE OF MAN.

[*Contributed by* His Honour S. Stevenson Moore.]

There was no legislation this year of any general interest.

3. THE CHANNEL ISLANDS: JERSEY.

[*Contributed by* E. T. Nicolle, Esq.]

Betting Law.—An Order in Council dated March 28th, 1904, sanctions a Law passed by the States of Jersey on February 24th, 1903, and February 28th, 1904, on betting.

Art. I. prohibits the establishing or keeping of an office of any nature whatsoever for the purpose of making, proposing, accepting, or receiving bets. It also prohibits the making, proposing, accepting, or receiving of bets in any public road or place, either as principal or as agent, either on commission on the result of horse races or of any other sport or competition.

The penalty is a fine not exceeding £10 for first offence and £100 in case of repetition of offence, or in default imprisonment with or without hard labour at the discretion of the Court for a period not exceeding six months.

Art. II. prohibits the announcement either in the public press or by any other means directly or indirectly that bets are made, proposed, accepted, or received in any office or place whatsoever, either in the island or elsewhere, under a penalty of from £5 to £50.

Art III. renders the proprietor of a newspaper publishing a betting advertisement liable to a fine of from £5 to £50.

Cadet Corps.—An Order in Council dated April 21st, 1904, confirms a Law passed by the States on January 14th, 1904, to permit and encourage the formation in the island schools of Cadet Corps, and attaching these bodies to the regiments of the Royal Jersey Militia. The arms and ammunition are supplied by the Government.

Fishery Law.—An Order in Council dated October 24th, 1904, sanctions a triennial Law passed by the States on March 15th, 1904, on the subject of the local fisheries and the sale of fish. The Law only applies to the island coast fisheries, but clause 10 prohibits fishing on Sunday.

Financial Administration Law.—An Order in Council dated November 14th, 1904, confirms a Law passed by the States on February 5th, 1903, and September 7th, 1904, relative to the Administration of the Public Finances.

The Law provides for the life appointment of two auditors (one legal) and for the manner in which the States Budget shall be introduced and discussed in the Assembly.

II. BRITISH INDIA.

[*Contributed by* Sir Courtenay Ilbert, K.C.S.I.]

1. ACTS OF GOVERNOR-GENERAL IN COUNCIL.

Acts passed—16.

Statute Law Revision.—The Repealing and Amending Act, 1903 (No. 1), cleared away from the Indian Statute Book 125 old Acts and Regulations, besides making substitutions and partial repeals in many others. Sir Thomas Raleigh, in introducing the Bill, questioned the propriety of applying the term "code" to corrections of Provincial Acts, and intimated that the new Provincial "code" for Bengal would be arranged, not in chronological order, but under subject headings.

Electricity.—The Indian Electricity Act, 1903 (No. 3), deals with the very difficult question as to the conditions on which licences are to be granted for the supply of electrical energy for lighting and other purposes. It is based on the English Electric Lighting Clauses Act, 1899, on other English and Bengal Acts, and on a draft submitted by Messrs. Crampton & Co. Licences run for an indefinite time, but local authorities have power to purchase at the end of a period which must not exceed forty-two years, and at intervals not exceeding ten years thereafter. The price to be paid is the fair market value of the lands, buildings, works, materials, and plant at the time of purchase, but without any addition for compulsory purchase, or goodwill, or profits. Power is taken to appoint advisory boards for the assistance of the Government of India, or of any Provincial Government, in working the Act.

Paper Currency.—The object of the Indian Paper Currency (Amendment) Act, 1903 (No. 6), is to make more popular the use of currency notes of small denominations by extending the range of legal tender and the number of places where they may be cashed.

Works of Defence.—The Indian Works of Defence Act, 1903 (No. 7), is an Act containing very elaborate provisions for imposing restrictions on the use and enjoyment of land in the vicinity of works of defence in order that the land may be kept free from buildings and other obstructions, and for determining the amount of compensation to be paid on account of the imposition of these restrictions.

Probate.—The Probate and Administration Act, 1903 (No. 8), extends the powers of district judges in respect of the grant of probate. Those who criticise, not without justice, English Acts of Parliament as unintelligible might with advantage study this Act and the Tariff Act of the same year. They are couched in terms so technical and referential in their character

that they would be absolutely unintelligible to an ordinary Member of Parliament.

Tea Duty.—The Indian Tea Cess Act, 1903 (No. 9), is an interesting experiment. It was passed at the instance of Indian tea planters, and imposes on exports of tea a duty, the proceeds of which are to be applied by a representative committee towards meeting the cost of such measures as may be considered advisable for promoting the sale and increasing the consumption in India and elsewhere of teas produced in India. It is to be in force for five years, and expires, unless renewed, on March 31st, 1908.

Victoria Memorial.—Act X. of 1903 has constituted a body of trustees to supervise the construction and management of the stately hall which is to be a memorial of the late Queen at Calcutta.

Income Tax.—Act XI. raises from Rs. 500 to Rs. 1,000 the limit below which incomes are not to be liable to income tax in India.

Customs Duties.—The Indian Tariff (Amendment) Act, 1903 (No. 12), continued until March 31st, 1904, the countervailing duties on bounty-fed sugar.

Foreign Marriages.—An Order in Council made in 1903 under the Foreign Marriages Act, 1892, contained regulations as to marriages abroad where one of the parties to the marriage is resident in India or a Colony. The Indian Foreign Marriage Act, 1904 (No. 14), directs how the notices required by this Order are to be given in India.

Extradition.—The Indian Extradition Act, 1903 (No. 15), provides for the administration in India of the Extradition Acts of 1870 and 1872, and the Fugitive Offenders Act of 1881. It also provides machinery for the extradition of foreign criminals in cases to which these English Acts do not apply, *e.g.* where the criminal comes from one of the Indian Native States or from a neighbouring Asiatic State.

Municipalities.—The Central Provinces Municipal Act, 1903 (No. 16), does not appear to make any very material change in the law, but re-enacts the existing law with additions and modifications suggested by the laws of other Indian provinces.

2. MADRAS.

Acts passed—2.

Labour Contracts.—The Madras Planters' Labour Act, 1903 (No. 1), was passed to regulate the conditions of native labour in the planting districts of Madras, and is based on the report of a Commission which was appointed a few years ago, under the chairmanship of Sir William Mackworth Young. It contains provisions for the protection of the plantation coolie, but on the other hand makes both the "maistry," *i.e.*

the contractor for the supply of labour, and the labourer, liable to punishment for breach of contract. The maximum term for which a contract can be entered into under the Act is one year. Some of the provisions of the Act were suggested by the Act for regulating the employment of labour in the tea gardens of Assam, where, however, the conditions of labour materially differ, particularly in the fact that the Madras coolie is not brought from a distant province. The measure was vigorously opposed by native members during its passage through the Legislative Council and was made the subject of severe criticism in the native press.

Impartible Estates in Land.—The Madras Impartible Estates Act Continuance Act, 1903 (No. 2), continued for a further period of a year, but with important modifications, the temporary Act of 1902. The provisions of this Act and the nature of the modifications made in 1903 are explained in the Review of the Indian Legislation of 1902 (vol. v. p. 337).

3. BOMBAY.

Acts passed—5.

Excise.—The Bombay Abkari (Amendment) Act, 1903, was made necessary by a decision of the Bombay High Court, and declares that the spirit for the sale of which a licence is required includes methylated spirit.

Motor-Cars.—Act No. 2 exempts auto-motor cars propelled by steam from the restrictions imposed by the Bombay Boiler Inspection Act, 1891.

Record of Rights in Land.—The Bombay Land Record of Rights Act, 1903 (No. 4), is the result of a long period of incubation, and is an interesting attempt to establish public local records of rights and interests in land. Subject to certain exceptions there is to be kept in every village a record of rights in all lands belonging to the village, and the record is to include

(*a*) the names of persons who are owners, holders, mortgagees, landlords, or tenants of every piece of land, or assignees of the rent or revenue thereof;

(*b*) the nature and extent of the respective interests of such persons and the conditions or liabilities (if any) attaching thereto;

(*c*) the rent or revenue (if any) payable by or to any of such persons; and

(*d*) such other particulars as the Government of Bombay by rule prescribes.

Where a record of right has been established for a village, every person acquiring by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease, or otherwise, any right as owner, holder, mortgagee, landlord, or tenant of land in the village, or assignee of rent or revenue, is required to report his acquisition to the village accountant within three

months from the date of the acquisition. The report (or a copy or abstract of it) is to be posted in some conspicuous place in the village, is to be notified to all persons appearing from the report to be interested in its subject-matter, and is to be entered in the "register of mutations." Every person whose rights, interests, or liabilities are required to be, or have been, entered in any record or register under the Act is bound, on the requisition of a revenue officer, or a village accountant, to furnish or produce for his inspection all information or documents needed for the correct completion or revision of the record or register, and being within the knowledge, possession, or power of the person for whom the registration is made. Failure to make the report or supply the information required by the Act may render the defaulter liable to the payment of a sum not exceeding Rs. 25 which the Act euphemistically calls a fee, but which looks very like a fine.

If a plaintiff brings a suit relating to land in a village where there is a record of right, he is to annex to his plaint a certified copy of every entry relating to the land appearing in the record or in the register of mutations.

The advantage to be derived from an accurate public record of rights in land will be generally acknowledged. But whether the penalties threatened or the inducements offered by the Bombay Act will be sufficient securities for the maintenance of such a record, whether the provisions of the Act will not work oppressively on the small landholder or mortgagee, whether the village accountant will prove equal to the strain of the duties imposed upon him, these are questions about which persons familiar with the difficulties of registering titles to land in India and elsewhere may not unreasonably entertain misgivings. However, the Act is avowedly experimental and will require very careful watching.

4. BENGAL.

Acts passed—5.

Landlords and Tenant.—The Bengal Tenancy (Validation and Amendment) Act, 1903 (No. 1), validates certain proceedings taken and records made under the Bengal Tenancy Act, 1885, and amends the provisions of that Act in some minor particulars.

The region of Chota Nagpur has been the scene of agrarian troubles, more or less acute, ever since the disturbances of 1831, known as the Kol rebellion, and has for many years provided occupation for the Executive Government and Legislature of Bengal. The primitive state of society, the race differences between the landlords, who are or claim to be Rajputs, and the tenants, who are largely of Kol or Dravidian origin, and the curious and complicated system of land tenure, of which there is a good description in the first volume of Sir Henry Baden Powell's *Land Systems*

of British India, supply fertile and unceasing elements of disturbance. The relations of landlord and tenant in this region were in 1903 regulated by an Act of 1879. At one time it was proposed to substitute for this Act the general Bengal Tenancy Act of 1885, with some necessary modifications, but in 1903 the Bengal Government resolved to content themselves with amending the Act of 1879. The Chota Nagpur Tenancy (Amendment) Act, 1903 (No. 5), proceeded on these lines. It places restrictions on the rights of transfer by *raiyats*, makes special provisions for "Khunt-Kattichari" tenancies, *i.e.* tenancies held by the successors in title of the original clearers of the jungle, and makes several important alterations in the procedure under the Act of 1879.

Intoxicating Liquors.—The main object of the Bengal Excise and Licensing (Amendment) Act, 1903 (No. 2), was to prevent the employment of women in the sale of intoxicating liquors on licensed premises. The Bengal barmaid had been found to be an undesirably potent influence in attracting customers and encouraging the consumption of liquor.

Motor-Cars.—The Bengal Motor-Car and Cycle Act, 1903 (No. 3), empowers the local Government to make rules for regulating the use of motor-cars and cycles The rules were intended to follow the lines of the English regulations on the same subject.

Port Dues.—The main object of the Chittagong Port Commissioners (Amendment) Act, 1903 (No. 4), was to increase the revenue of the port authority by authorising the levy of port dues.

5. UNITED PROVINCES.

Acts passed—2.

Land.—Both of the two Acts passed by the Legislature of the United Provinces of Agra and Oudh relate exclusively to the British districts in the region known as Bundelkhand, south of the Jumna. The Bundelkhand Encumbered Estates Act, 1903 (No. 1), and the Bundelkhand Alienation of Land Act, 1903 (No. 2), are twin measures, and are complementary to each other. The object of the first is to clear off the mortgage debts incurred by members of agricultural tribes. It revises with amendments, and extends to a wider area, the Jhansi Encumbered Estates Act of 1882, which was in force from 1882 to 1887, and it proceeds on the same general lines as the Encumbered Estates Acts which have been framed for other parts of India. The object of the second Act is to guard against the creation of encumbrances in future, by placing restrictions on the selling and mortgaging of land by members of agricultural tribes. In these respects it follows the precedent set by the much-contested Punjab Alienation of Land Act, 1901, on which some comments were made in the Review of Indian Legislation for that year.

6. PUNJAB.

Acts passed—2.

Military Transport.—The Punjab Military Transport Animals Act, 1903 (No. 1), provides for the periodical enumeration and registration of animals in the Punjab fit, or ordinarily used, for the purposes of military transport, and for the compulsory acquisition of such animals in time of war, and also for impressment of them for hire for the purposes of transport at any time.

Court of Wards.—The Punjab Court of Wards Act, 1903, consolidates with amendments the law relating to the Court of Wards. The Court consists of the Financial Commissioner acting directly or through his official subordinates. Any landholder who appears to the local Government to be incapable of managing or unfitted to manage his or her affairs

(*a*) by reason of being a female; or

(*b*) owing to any physical or mental defect; or

(*c*) owing to his having been convicted of an offence and to his vicious habits or bad character; or

(*d*) owing to his having entered on a course of wasteful extravagance likely to dissipate his property

can be placed under the superintendence and control of the Court of Wards. But the jurisdiction is not to be exercised in the two latter classes of cases (crime and extravagance) unless the landholder belongs to a family of political or social importance and the local Government is satisfied that the exercise of the jurisdiction is desirable on public or general grounds.

7. BURMA.

Acts passed—2.

Resident Strangers in Towns.—The Upper Burma Towns Regulation Amendment Act, 1903 (No. 1), requires the residence of strangers in certain towns in Upper Burma to be notified to the authorities.

Municipal Provident Fund.—The main object of the Burma Muncipal Act Amendment Act, 1903 (No. 2), is to authorise the establishment of a provident fund for officers and servants of the Rangoon Muncipal Committee.

8. REGULATIONS UNDER 33 VICT., C. 3.

Regulations made—4.

The four Regulations made in 1903 under the Government of India Act, 1870, are of no general interest.

III. EASTERN COLONIES.

1. STRAITS SETTLEMENTS.

[*Contributed by* T. Baty, Esq.]

29 Ordinances.

Pawnbrokers (Ord. 1).—It is made subject to $100 fine for a pawnbroker to take a pledge from a child under sixteen (formerly "ten"), or to deal, by carelessness, in stolen property.

Municipal Management (Ord. 2).—Various amendments are made in the Municipal Ordinance, 1896. They are numerous, but of no special novelty or importance. The definition of "occupier" is extended to include persons having the management or charge of places as agents: apparently this could not include mere servants. "Qualified medical practitioner" is now defined to mean the possessor of a European, British Indian or Colonial, or United States qualification, or one obtained in the Empire of Japan (but not, it seems, in South America).

Municipalities are empowered to regulate the use of the streets by auto-motors, to regulate and prohibit horse-breaking and training in the streets, and to make by-laws relating to the construction, control, and management of places where food or drink is sold:—somewhat sweeping powers, which might conceivably be interpreted to enable municipalities to regulate the price of food. The supply of electricity by municipalities is provided for.

The principal ordinance makes the municipalities liable to clean the public streets; the present amending one makes occupiers liable to clean the private ones, and empowers the municipalities to enforce and charge for a system of removal of house refuse at a month's notice. Compartments and galleries may not be erected in common lodging-houses; nor may buildings be erected on insanitary matter. The commissioners of municipalities have a perfectly free hand in dealing with houses which appear to be dangerously infested by rats, mice, or other vermin, and may presumably pull a house down, on their simple belief that such a step is necessary for the removal of the nests. No provision is made for compensation. Stringent powers are taken of isolating cases of infectious disease and of imprisoning persons who have lived in houses closed by the authorities, *militari manu*, which, in England at all events, would lead to distressing scenes, unless administered with more tact than is *ex officio* the attribute of a medical officer. Lessors and outgoing tenants of houses are placed under obligations to inform the incoming tenant of the occurrence of infectious disease; and drivers of conveyances (previously compelled to disinfect) are prohibited from conveying infectious passengers at all.

Wide powers are given to the Health Officer and President, of interference with dairies (with an appeal to the Governor in Council) and of inspecting the dairymen's books. Vaccination every seven years may be ordered by the Health Officer (subject to the veto of a qualified practitioner), under a penalty of $25. The whole of the sanitary provisions bear some traces of "panic legislation."

Petroleum (Ord. 4).—Minor alterations are made in the details of carriage of petroleum by sea, mainly in the direction of relaxation.

Currency (Ord. 13).—A note guarantee fund was established by the Ordinance of 1899 which authorised a paper currency. A fixed proportion of it was to be in coin; and the present Ordinance empowers this proportion to be re-minted (at the cost of general revenue) without involving the necessity of realising and converting into coin an equivalent from the invested proportion.

Morphine (Ord. 15).—The unlicensed import (for landing) of morphine and its preparations in a state suitable for injection, and the keeping or using of a place for its injection (and the knowing permission of the same) are penalised by either or both of (1) fine up to $1,000; (2) six months' imprisonment. Curiously, there is no saving in this clause for doctors; yet they keep and use surgeries for injecting morphine at least as much as a publican keeps his inn for gambling.

The injection of morphine (except to oneself), and the furnishing of morphine (except to a doctor or chemist, or for export), are offences penalised by either or both of (1) $50 fine; (2) two months' imprisonment. Here there is a saving for acts done by or under the direction of a qualified medical practitioner. Powers of search and seizure on a justice's warrant are included, and ships and wharves and islets may be searched without warrant, in which case compensation is provided for. The Governor in Council is invested with the power to prescribe the way in which chemists shall keep their accounts of transactions in morphine, and the making by them of periodical returns regarding their dealings with the drug.

Hawkers (Ord. 16).—This Ordinance can be suspended by the executive in any district or with regard to any class of persons. It requires hawkers to be licensed, and makes it a condition of licence that they shall be of good character, under no infectious disease, and intending to carry on the trade of a hawker. This would seem to exclude persons who (as in *Gregg* v. *Smith*, L.R. 8 Q.B. 302) carried round goods as a charitable *παρέργον*.

Persons carrying goods to a public place (whether this would include a hired hall, *quære*), and offering for sale their goods or skill in handicraft (a sale of skill is an extraordinary phrase), are "hawkers"—but not people going to market, even when they sell by the way. A system of badges and inspection (under the penalty of arrest) is provided. The transfer of

badge or licence is penalised by a $10 fine or fourteen days' imprisonment. False declarations may entail a fine of $50 or three months' imprisonment. An accosted private person, or one in whose premises the hawker is found, may require to see the licence, and on refusal the hawker may be arrested by such person. And municipalities may regulate the mode of sale by hawkers within their limits at stalls and tables or otherwise.

The Act is ambiguous. Two sorts of licences are contemplated—"itinerant" and "fixed stall" licences; but it is only in the section fixing the fees that this distinction begins to appear, and no clear distinction is drawn between the two classes of business.

Cocos Islands (Ord. 18).—The law of the Settlements (with certain exceptions) is applied to these islands, joined to them by Order in Council of May 20, 1903. They are declared to form part of the Settlement of Singapore. But is there any necessity for the colony thus legislating to supplement the act of the Crown in adding new territory to its limits?

Opium (Ord. 19).—The Opium Ordinance, 1894, was amended by provisions empowering the establishment of bonded and licensed warehouses, forbidding the importation of preparations of opium, and providing for their manufacture at licensed factories. The necessary modifications were introduced in the definition of opium, etc., consequent on morphine being now treated in a separate Ordinance. S. 9 of the principal ordinance of 1894 is amended, among other modifications, by omitting certain words "wherever they occur," which they nowhere do. It is possible that the words now directed to be omitted may at some time have been inserted.

Commissions of Inquiry (Ord. 21).—This Ordinance provides for the appointment of bodies similar to Royal Commissions, with power to compel the attendance and answers of witnesses in the same way as the Supreme Court, and to grant certificates of indemnity.

Hackney Carriages (Ord. 28).—The Governor may appoint the Registrar of Hackney Carriages to be a magistrate for the purposes of hearing complaints under the Ordinance of 1879, relating to such conveyances. This seems a curious blending of the executive and judicial powers.

Railway (Ord. 29).—This authorises the construction of a Government railway from Malacca to Pulan Sabang. The speed on level crossings is not to exceed ten miles. Trees may be felled which appear to obstruct the working of the line by their liability to fall on it or to impede the view of signals. The railway may be closed, or specific rolling stock disused at the will of the Governor on the report of an engineer appointed by him. Questions of undue preference and unreasonable "terminals" are referred to a judge of the Supreme Court, with appeal to the Court of Appeal. The manager is made a quasi-corporation for purposes of suit, and the property of the railway is considered for that purpose as vested

in him. None of the property provided for the working of the railway can be taken in execution.

Regarding claims against the railway, it is provided that the plaintiff need not prove how loss, destruction, or deterioration was caused; but claims must be made within six months. In the case of luggage it must have been delivered into the custody of an official. The provision for payment of full fare from the train's starting-point, in case of a passenger not producing a ticket, is subject to his failing to prove that he has travelled a less distance.

2. FEDERATED MALAY STATES.

[*Contributed by* T. Baty, Esq.]

(i) PERAK.

This State passed some eighteen enactments in 1903, of which the more important deal respectively with *Opium*, *Public Safety* ("Prevention of Crimes"), *Cruelty to Animals*, *Steam Boilers*, *Spirit*, *Opium and Gambling Farms*, *Automobiles*, *Specific Relief*, *Army Discipline*, *Police do.*, *Land*, *Extradition*, *Railways Clauses Consolidation*, *Coinage* (two), *Quarantine*. *The Straits Settlements Penal Code* was likewise adopted. As this Code contains provisions as to treason: it is a little difficult to see how these are to apply without alteration to a foreign country. The Automobiles Enactment imposes no speed limit. The Animals Enactment protects all kinds of creatures, including reptiles and insects (of which the Malay Peninsula contains a representative collection): it does not, however, extend to worms and other annelids. The Criminal Fugitives' Surrender Enactment defines a "fugitive criminal" as "any person *accused* or convicted of a surrender crime." It only authorises extradition to British dependencies—and therefore not to the sister States of the Federation. Political crimes are not to be a ground of extradition. Quarantine is dealt with in the modern approved fashion of turning the whole matter over to the executive, which has proved so unsatisfactory a feature of our own legislation regarding, *e.g.*, motor-cars and educational reform.

(ii) SELANGOR.

This, the second of these States to come under British rule—for their theoretical independence is a pure fiction, designed to oust British law—closely followed the legislation of Perak.

(iii) PAHANG.

Pahang, the latest addition, on the eastern seaboard, and until recently

the last resort of native Malay independence, pursued a similar course. The Criminal Procedure Code of 1900 was replaced by an amended one: otherwise the only important difference consists in the passage of a Statute of Limitations.

(iv) THE NEGRI SEMBILAN.

This, signifying "Seven States," is a minute sub-federation in the far interior. The council there is not the (nominal) adviser of the head of the State, who himself is under the control of the British Resident, but is composed of chiefs participating in the sovereign authority. The legislation does not, however, materially differ.

There is a Game and Wild Birds Protection Act, in which the interpretation clause is not without interest—"shoot" prettily includes "kill, wound, snare, or net." Power is reserved to "shoot" animals damaging crops, and a Resident's licence appears to be required for "shooting" even sparrows and parrots.

3. MAURITIUS.

[*Contributed by* Mr. Justice Wood Renton.]

Legislation for 1903.

(54 Ordinances were passed. With the exception of the Municipality Ordinance, few were of importance.)

Municipality Ordinance (No. 23 of 1903).—The fundamental changes of principle which have been introduced are as follows:

I. *The Ward System.*—There are four wards which divide the town of Port Louis by a line running from north to south; that is to say, from the sea to the hills. The eastern and western suburbs, which are and have always been considered separate communities, receive a distinct recognition, and the centre, the most important part of the town, is divided into two equal parts. The representation of the different sections of the town is well balanced, the preponderance resting, however, with the central wards, which embrace practically the residences and offices of the whole of the professional and commercial community.

II. *Elections* (Chap. 4).—The original proposal was to have a continuous Council, based on the law of British Guiana; that is to say, there would be one general election, and thereafter periodical elections, the members returned serving the full period of the term of office. Ultimately, however, a *via media* was proposed of a general election every three years, the vacancies to be filled up immediately, and the candidates returned serving only to the next general election.

III. *Franchise* (Article 9).—The original proposal lowered the existing franchise of a monthly rental of Rs. 20 to Rs. 10. After discussion in Council it was agreed to fix it at Rs. 15, by 16 against 2.

IV. *The Audit of Accounts* (Article 106).—The last point of principle was the appointment of a Government auditor and the personal liability of the councillors. The Government will appoint one auditor, and the municipality one. They have powers of disallowance of items of expenditure not authorised by Article 93, surcharging the same on the persons who authorised the making of the payment. They have also power to charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been and is not brought into account by that person (par. 3); and also to report (par. 4) as to the advisability of proceedings to be taken for the recovery of monies due. Persons aggrieved by the decision of the auditors may apply to the Supreme Court by way of certiorari (par. 5) to remove the disallowance or surcharge or allowance or refusal to disallow, and the Court is granted full power of remission when the disallowance or surcharge is incurred under such circumstances as makes it fair and equitable that the disallowance or surcharge should be remitted. In order, however, to save the expense of an application to the Supreme Court, persons aggrieved may appeal to the Governor in Executive Council. Provision is also made for cases on difference of opinion between the auditors (par. 8).

Denaturation of Spirits Ordinance (No. 21 of 1903).—Ordinance No. 34 of 1900, entitled "An Ordinance to provide for the denaturating of spirits manufactured in the colony for lighting and heating purposes," provided (A) for the denaturating of spirits at the Central Rum Warehouse in Port Louis only, and (B) for the payment of a duty of Rs. 4.40 for every hectolitre of denaturated spirits removed from the warehouse for home consumption. On certain representations being made to Government pointing out that the new industry would be hampered by the expenses in the removal of spirits to be denaturated from the country distilleries to the Central Rum Warehouse in town, where a rent for storage had besides to be paid, and the high rate of duty to be levied on the denaturated spirits, a committee was appointed to inquire and report upon the means of facilitating the use of denaturated alcohol in fair competition with kerosene oil or electricity. The recommendations of that committee were embodied in Ordinance No. 21 of 1903, which was afterwards laid before the Council of Government and finally passed on October 6th, 1903.

Legislation for 1904.

Ordinances passed—39.

The Lesser Dependencies.—Two Ordinances (Nos. 4 and 14 of 1904)

deal with the Lesser Dependencies of the colony, including such islands as Diego Garcia, Salomon Islands, and Farquhar Islands, but not including Seychelles, which has now become a separate colony, connected with Mauritius only by an appeal in certain cases from the Supreme Court of Seychelles to the Supreme Court of Mauritius, or Rodrigues. The new Ordinances provide for the regular visitation of all the islands in the group by magistrates, before whom contracts of service are entered into, and who have the jurisdiction of magistrates of District Courts in regard to the engaged labourers in the islands. The owners of the islands, which are chiefly valuable in connection with the oil trade, contribute Rs. 12,000 a year towards the cost of administration.

Bankruptcy.—The policy of the bankruptcy law of Mauritius (Ordinance No. 23 of 1887) has been to exclude non-traders from the disabilities and privileges of bankruptcy; and "sugar and other planters" are expressly taken out of the statutory definition of "traders," the idea being to leave debtors belonging to the planter class subject to the liability of payment in full without the possibility of a statutory discharge. Many planters, however, besides planting, crush not only their own canes, but the canes of other planters; and it was held by the Supreme Court that in doing so they did an *acte de commerce* within the meaning of the Code of Commerce, and consequently brought themselves under the Bankruptcy law. Ordinance No. 11 of 1904 obviates this result for the future by excluding from the statutory definition of trader any planter, "whether an individual or a partnership, manufacturing or having manufactured sugar or other produce from his own estate or purchased from any other person."

Rates and Taxes.—Ordinance No. 15 of 1904 remedies a curious hiatus in the law, No. 18 of 1901. That law empowers the municipality and commissioners of townships to recover rates and taxes by attachment, in the hands of third parties, of sums of money due by them to the defaulting ratepayer. The procedure is as follows: An attachment order is served by an usher on the garnishee, who is thereupon required either to admit the debt or to deny it. If he admit the debt, he has to make a declaration in writing to that effect, and then pay the sum over to the attaching officer. If he denies it, he can be summoned before the competent Court to make an affirmative declaration to that effect. The law of 1901 went on to provide that "if the garnishee fails to comply with the said summons," or pays away the sum in his hands, he can be proceeded against as if he were the direct debtor. No provision, however, was made for the case of a debtor, who, having declared his indebtedness in writing, failed or refused to pay. Ordinance No. 15 of 1904 obviates this anomaly by putting the latter debtor in the same position as the former.

Sale of Opium.—Under Ordinance No. 2 of 1867, which regulates the

importation and sale of opium in Mauritius, opium imported by chemists and druggists was exempt from duty. A heavy penalty, however, might be imposed on any chemist or druggist using or selling for other than medicinal purposes any opium coming within this exemption. But proof was difficult, and it was clearly shown that the amount of opium supposed to be imported for medicinal purposes was increasingly out of proportion to the needs of the colony. Ordinance No. 17 of 1904 accordingly repeals the exemption clause.

Temporary Protection of Revenue.—Ordinance 18 of 1904, which is based upon the practice of the House of Commons, and on similar legislation in other Colonies, *e.g.* British Guiana, Barbados, and St. Lucia, provides that, whenever a resolution imposing any new, or altering any existing Customs or Excise duty has been passed by the Council of Government, such duty takes effect at once, and remains in force till the passing of the validating Ordinance. The resolution ceases to be in force on the rejection, withdrawal, or disallowance of such Ordinance, in which cases a refund is to be made of any duties, or, in case of increase of duty of any excess collected under the resolution to the parties who may have paid the same. When the alteration of the duty is by way of reduction, the Collector of Customs, or the Receiver-General, as regards excise, may collect the duty existing at the time of such reduction. The duty to be paid on goods or commodities liable to duties of customs or excise, is the duty chargeable at the date of removal from any warehouse, ship, distillery, or rum store.

Public Officers as Witnesses.—Officers of Government Departments are summoned as witnesses before the District Courts by simple notices, which save the expense of summons by an usher. Owing, however, to the wording of the Witnesses' Tariff Ordinance, 1898 (No. 53 of 1898), difficulty arose in allowing the expenses of such witnesses, as they are not "summoned" in the strict sense of the term. Ordinance 19 of 1904 puts these informal summonses in the same position as a summons by an usher for the purposes of taxation of costs.

Municipality Franchise.—The Municipality Ordinance, 1903 (No. 23 of 1903), conferred the municipal franchise on the managers of joint stock companies, whether existing under the law of the United Kingdom or of any British colony, or under the local law (*sociétés anonymes*), subject to the existence of the prescribed qualification. No provision, however, was made for the case of commercial partnerships in collective name, or in collective name and *commandite*, which, equally with *sociétiés anonymes*, constitute a *personne morale*. The Municipality (Amendment) Ordinance, 1904, amends the law in this respect.

Sanitation (Amendment) Ordinance, 1904.—Art. 40 of Ordinance 21 of 1900 provides for the appointment of Medical Referees for the purpose of holding autopsies in cases of plague, etc. At present, if any medical

referee is prevented from attending to his duties, there is no power to appoint a deputy. The present Ordinance supplies this hiatus. The director is enabled to make the appointment, on the suggestion of the referee, and all acts done by the nominee are to be as valid as if done by the referee himself.

Sanitary Wardens (Residence) Ordinance, 1904.—Under art. 2 (iii), par. 2, of the Public Health Ordinance, No. 51 of 1903-4, each of the sanitary wardens must reside in his own district, and (par. 3) the wardens must have offices in each of the districts under their charge. These provisions have been found to give rise to inconvenience, and it was thought to be desirable to allow the Director to determine the places of residence and offices of the wardens. This Ordinance effects the purpose.

Education (Amendment) Ordinance, 1904.—The object of this Ordinance is to enable laureates of the Royal College who are studying for the medical profession to undergo the prescribed course of instruction as to tropical diseases either at the London or at the Liverpool School of Tropical Medicine. At the close of the course an examination to the satisfaction of the Secretary of State has to be passed. The tuition fees are to be paid by the Colony.

Public Officers (Security) Ordinance, 1904.—It had been assumed in the colony for many years, and successive judges had acted on the assumption, that s. 49 of an Arrêté of Ist Brumaire, An. IV., which provided that the *cautionnement en immeuble* required from the Conservator of Mortgages might be *reçu par le Tribunal de Première Instance*—a term which in practice was interpreted as meaning the Judge in Chambers—dispensed with the necessity of a notarial deed, and that in such cases a bond with a mortgage of the property approved of, subscribed before the registrar, was sufficient. But this view of the law was, in 1904, overruled by the Supreme Court in the case of the *P.G.* v. *Régnard*, on the double ground that these mortgages, being conventional, could only be consented to under Art. 2127 of the Civil Code, by notarial deed, and that, even if Art. 2127 of the Civil Code did not apply, by the common law in force before the Civil Code was promulgated, mortgages could only be consented to in an authentic deed, which a bond subscribed before the registrar was not, inasmuch as the Judge in Chambers is not the *Tribunal de Première Instance*, and, therefore, could not give the registrar the *pouvoir d'instrumenter* necessary to confer authenticity. The present Ordinance dispenses with the necessity for a notarial deed in the case of security on immovables required or allowed to be furnished by public officers for the due discharge of their functions. The Ordinance prescribes for the future the simple and inexpensive procedure that has hitherto been adopted, and validates all securities, except the one expressly invalidated by the decision of the Supreme Court, in which the judgment had already

been acted upon, in which security has heretofore been furnished by bond and not by notarial deed.

Lights on Vehicles.—The Contravention Ordinance, 1904. This Ordinance deals with the lights to be carried by vehicles at night. The state of the former law was this: In the country, any person who drives a carriage, or rides a cycle, at *night*, without two lighted lanterns in the one case, and one in the other, incurs a penalty; and the Supreme Court decided in the case of the *P.G.* v. *Robillard* that it is "night" within the meaning of this enactment whether there is moonlight or not. In town, under the Municipal Regulations, no penalty is incurred when there is moonlight. The Inspector-General of Police reported that no difficulty has been caused by this condition of things as regards Port Louis. The present Ordinance leaves the law as it stands untouched in the country, but introduces a proviso, leaving the town under the Municipal Regulations for the time being. The result is to sanction the existing practice for the present. But the law can be altered for the town also, without fresh legislation, by a simple amendment of the Regulations. Automobile cars are required to carry at least one lamp before and one behind.

Oaths in Courts of Justice.—The law of Mauritius has hitherto provided for three forms of oaths: (*a*), the ordinary Christian oath; (*b*), a secular affirmation, taken by persons who objected to take any oath (Ordinance 28 of 1899); (*c*), a religious affirmation which Hindus and Muhammadans are permitted to take under Ordinance 16 of 1856. Ordinance 22 of 1904, which is based to some extent on the Indian Judicial Oaths Act (X. of 1873), enables Hindus or Muhammadans or other persons whose religious belief precludes them from taking the ordinary Christian oath, while the religious form now in use has no binding efficacy on their consciences, to be sworn in the form common amongst, or held binding by, persons of the race or persuasion to which they belong; and the oath may, if necessary, be administered out of Court. If the party or witness to whom such an oath is tendered refuses to take it, he is not bound to do so; but the fact and the grounds, if any, of his refusal will be recorded. The new Ordinance also—borrowing a provision from the law of Scotland—enables previous statements made by any witness to be proved against him, whether he is "hostile" or not. No such previous statement will, however, itself be evidence (unless corroborated) of the truth of the statements contained in it.

Company Law.—Ordinance 23 of 1904 provides for the inspection and obtaining of copies of the articles of association and of the list of shareholders of anonymous companies by shareholders and by the public on the same conditions as in England.

Draft Ordinances were also introduced, but not carried, legalising marriage with the brother of a deceased husband (marriage with a deceased wife's sister is already lawful in Mauritius under the Civil Status Ordinance, 1890);

and for securing the personal property of minors, in the same way as their real property is secured by the present law, against improper alienation.

Reports.—The most important *report* of the year is the Report of the Mountain Reserves Commission.

The Legislation of Ceylon and Hong-Kong will appear in the next number of the Journal.

IV. AUSTRALASIA.

1. COMMONWEALTH OF AUSTRALIA.

[*Contributed by* HERMAN COHEN, ESQ.]

Acts passed—Public, 16.

Introductory.—The bulk of legislation in 1903 consisted of Money Acts. Other statutes dealt with further provision for the election of senators (No. 2), the exercise of the judicial power of the Commonwealth (No. 6), practice and procedure of the High Court (No. 7), the amendment of the same (No. 13), the ratification of an agreement between the Admiralty, the Commonwealth, and New Zealand relative to the naval force on the Australian Station and the appropriation of moneys in pursuance thereof (No. 8), the publication of statutory rules (No. 18), the naval and military defence of the Commonwealth and its States (No. 20), and patents and inventions (No. 21).

Judicature.—Of these, by far the most important Acts legislatively are the two relating respectively to the judicial power of the Commonwealth and the practice and procedure of the High Court. Together they correspond broadly to the home Judicature Acts and the Orders and Rules of the Supreme Court; but, of course, there are innumerable *mutata mutanda.* Only the most important provisions can be noticed. The High Court consists of the Chief Justice and two other justices (s. 4); the qualification of a justice is *either* being a judge or ex-judge of a Supreme Court *or* being or having been a practising barrister or *solicitor*—N.B.—of not less than five years' standing (s. 5). The principal seat of the High Court is at the seat of Government (s. 10). A State Supreme Court has the *federal* jurisdiction a High Court judge at *chambers*, unless the matter is within the exclusive jurisdiction of the High Court (s. 17). A full Court means at least two justices (s. 19). Appeals from Courts of a State from which, at the establishment of the Commonwealth, an appeal lay to the Sovereign in Council, must be heard by at least three justices (s. 21); so must applications for leave to appeal to the King in Council on constitutional

questions between the Commonwealth and a State or between States *inter se* (s. 22).

If a full Court is equally divided in opinion, the opinion of the Chief Justice (or, if he is absent, of the senior) is to prevail, but where a State judge had exercised *federal* jurisdiction, his decision is to be affirmed, unless the latter expressly requests "that the matter shall be determined without reference to the fact that he has pronounced or given the decision" (s. 23). S. 24 is a remarkable instance of legislation by incorporation: "The High Court shall have the same power to punish contempts of its power and authority as is possessed at the commencement of this Act by the Supreme Court of Judicature in England." The High Court is to have original jurisdiction "in all matters arising under the constitution or involving its interpretation" (s. 30).

The fusion of law and equity is provided for by s. 32, which is closely modelled on sub-s. 7 of the memorable s. 24 of the great Judicature Act. Generally, there cannot be appeals from Supreme Courts to the High Court where the matter at stake is worth less than £300 (s. 35). The High Court has exclusive jurisdiction in "matters arising directly under any treaty," suits between States, suits between the Commonwealth and a State, and "matters in which a writ of mandamus or prohibition is sought against an officer of the Commonwealth or a federal Court" (s. 38). It may grant leave to appeal to itself, though State law prohibits such appeal (s. 39, *c.*) The salary of the Chief Justice is £3,500 per annum, that of the puisnes £3,000 (s. 47); travelling expenses are allowed to the extent the Governor-General considers reasonable (*ibid.*). The High Court may for good reason strike off the name of any barrister or solicitor from the register (s. 49). The executive officer of the High Court shall be called the Marshal (s. 53).

Part IX. (ss. 56-67) is entitled "Suits by and against the Commonwealth and the States." It replaces the temporary Act of 1902 quoted in vol. xii. of the Journal, p. 356. S. 64 expressly enacts that in such suits "the rights of the parties shall as nearly as possible be the same . . . as in a suit between subject and subject." But execution or attachment cannot issue against the property or revenues of Commonwealth or State (s. 65).

Indictable offences against the Commonwealth are to be prosecuted in the name of the Attorney-General "or of such other person as the Governor-General appoints in that behalf," such appointment to be "by commission in the King's name" (s. 69, 1 and 2). In the next sub-section is the echo of recent home legislation:—

(3) Any person committed for trial for an indictable offence against the laws of the Commonwealth may at any time within fourteen days after committal and before the jury is sworn apply to a justice in chambers or to a judge of the Supreme Court of a State for the appointment of counsel for his defence. If it be found to the satisfaction of the justice or judge that such person is without

adequate means to provide defence for himself, and that it is desirable in the interests of justice that such an appointment should be made, the justice or judge shall certify this to the Attorney-General, who may, if he thinks fit, thereupon cause arrangements to be made for the defence of the accused person. Upon committal the person committed shall be supplied with a copy of this sub-section.

As to criminal appeals, ss. 72-3 provide a machinery pretty much like that which exists in the Court for Crown Cases Reserved. There is no appeal on a question of fact (unless it is given by s. 77, which empowers the High Court to give *special* leave to appeal to itself), but (*semble*) the trying Court is bound to reserve any question of law on the application of the defence made before verdict, and may do so at any time in its discretion, for a full Court (High or Supreme). The Court of Appeal may (*inter alia*) "amend the judgment or . . . make such other order as justice requires," which seems to imply the power of increasing or decreasing the sentence. History and tradition have inspired the following section (80): "So far as the laws of the Commonwealth are not applicable, or so far as their provisions are insufficient to carry them into effect, or to provide adequate remedies or punishment, the common law of England as modified by the constitution and by the statute law in force in the State in which the Court in which the jurisdiction is exercised is held shall, so far as it is applicable and not inconsistent with the constitution and the laws of the Commonwealth, govern all Courts exercising federal jurisdiction in the exercise of their jurisdiction in civil and criminal matters."

Finally, the justices of the High Court may make Rules of Court for carrying this Act into effect (s. 86), but every Rule so made must be laid before Parliament, *i.e.* of the Commonwealth, and on an address of either House within forty days of its being so laid the Governor-General may annul it (s. 87).

Supplementary to this Act (No. 6) and "assented to" almost on the same day is the

High Court Procedure Act (No. 7), by far the largest part of which consists of the schedule containing the Rules of Court, distributed under forty-nine orders as to original jurisdiction and in four sections on the appellate jurisdiction, with an appendix of nine forms. A very simple machinery is provided by the Act (ss. 32-4) to prevent clashing between it and the powers conferred on the judges by the Judiciary Act (s. 86, cited above) to make Rules of Court: (it is not quite clear, but it seems that) they may amend any Rule in the schedule—in short, they are to prevail over the statute.

Little in the Act itself calls for special notice. There is to be a seal, inscribed as "The Seal of the High Court of Australia," in the custody of the Chief Justice (s. 3). All writs, etc., issued from the High Court are

to be in the name of the King (s. 4). There is provision for transmitting in an urgent case documents from a district registry to any other by telegraph on payment by the party of the expense incurred (s. 9), and the order made in such a case may be notified to the district registry in the same way, "and thereupon, and without waiting for receipt of the order, full effect shall be given to the order" (s. 10). The general rule is trial without a jury (s. 12). The modern unpopularity of technicality is illustrated by s. 24, which runs:—

(1) No proceedings in the High Court shall be invalidated by any formal defect or by any irregularity, unless the Court is of opinion that substantial injustice has been caused thereby, and that the injustice cannot be remedied by an order of the Court.

(2) The Court or a justice may make an order declaring that any proceeding is valid notwithstanding any such defect or irregularity.

Rules Publication Act (No. 18).—Provision is made (*inter alia*) for the publication in the *Gazette* of draft rules made not only in reference to the Courts of Justice, but "by the Governor-General, or any Minister, or the Inter-State Commission, or any Government department" (s. 2).

Defence Act (No. 20).—This statute is of paramount interest in view of recent and future political developments. A few characteristic points may be noticed.

In the definition section (4) "Minister" means Minister of State for Defence; "war means any invasion or apprehended invasion of, or attack or apprehended attack on the Commonwealth, or any territory under the control of the Commonwealth, by an enemy or armed force."

The Governor-General may appoint the chief military or naval commander from the King's "regular forces," or from the Defence Force, and appoint and promote officers of the latter (s. 8). "In the first appointment of officers preference shall be given, in the case of equality of qualifications, to persons who have served in the Defence Force for three years without a commission" (s. 11). No civil contract between officer and King or Commonwealth is hereby created (s. 13). No one is to be appointed an officer unless he has passed the prescribed examination, but the Governor-General may exempt an officer of the King's regular forces (s. 14) or any one for distinguished services (s. 22). Appointments are during the pleasure of the Governor-General, but no officer is to be dismissed without being heard (s. 16). Warrant-officers and "non-coms." are to be appointed by superior officers (s. 18). The Governor-General places officers of the permanent forces (*vide infra*) on a half-pay list; if after a year they remain unemployed, they must go on the unattached list (s. 23), on which, too, the Governor-General may place officers of the Defence Force (s. 24); he may also form a reserve list (s. 25), and may place officers on retired lists (s. 26). He "may appoint a Board of Advice to advise on all matters relating to the Defence Force submitted

to it by the Minister" (s. 28). He may establish a naval and military college (s. 29).

The Defence Force is divided into two branches, "the permanent forces and the citizen forces" (s. 30). "No permanent military forces shall be raised, maintained, or organised except for administrative and instructional staffs, including Army Service, Medical and Ordnance Staffs, Garrison Artillery, Fortress Engineers, and Submarine Mining Engineers" (s. 31). The citizen forces are divided into militia, volunteer, and reserve. Volunteers are defined to be "not ordinarily paid for their service in times of peace." The reserve consists of "(*a*) members of rifle clubs, constituted as prescribed . . .; (*b*) persons who, having served in the active forces or otherwise, as is prescribed, . . . are enrolled as members" (s. 32). Subject to this Act, the Governor-General may raise the forces he deems necessary "for the defence and protection of the Commonwealth and of the several States" (s. 34). Enlistment is for three years—except in the volunteers and reserve, where it is for two (s. 36), but there are provisions for buying out or earlier discharge (ss. 40-41). The Governor-General may disband any corps or part (s. 44). He may call out the citizen forces for active service in time of war (s. 46). The naval forces are bound to serve outside the Commonwealth for "training or in time of war for . . . defence, etc." (s. 48), but the military forces are not so bound unless they voluntarily agree (s. 49). By s. 51, where "domestic violence" has been proclaimed to exist in a State, the Governor-General may, "upon the application of the Executive Government of the State," send troops thither to protect it (s. 51). For training or in war the naval forces of the Commonwealth may be sent aboard the King's ships on the Australian Station and be subject to British naval law (s. 54). "The military forces shall . . . on active service be subject to the Army Act (Imperial) save so far as it is inconsistent with this Act" (s. 55), and so the Navy, *mutatis mutandis* (s. 56).

Voluntary enlistment is the general rule (s. 35), but "all male inhabitants of Australia (excepting those who are exempt from service in the Defence Force) who have resided therein for six months and are British subjects and are between the ages of eighteen and sixty years shall, in time of war, be liable to serve in the militia forces" (s. 59). But there is an order in liability to such service, viz. (1) unmarried men or widowers without children between eighteen and thirty; (2) ditto between thirty and forty-five; (3) married men or widowers with children between eighteen and forty-five; (4) all men between forty-five and sixty. Parliament if not sitting when the militia is called out, must be summoned within ten days (s. 60). "Persons whom the doctrines of their religion forbid to bear arms or perform military service shall be exempt upon such conditions as may be prescribed" (s. 61). The Governor-General has power to form cadet corps, naval and military, of youths between the ages of twelve and fourteen (s. 62).

Part VI. deals with special powers in relation to defence, and gives the

Governor-General great control over the railways, especially in time of war (s. 64), when, too, there may be billeting and quartering except in houses "solely occupied by women or by women and children" (s. 68). Under "Offences" (Part VII.) there is created the statutory offence of a "contractor, purveyor, or other person" fraudulently supplying inferior provisions, material, equipment, etc.; it is punishable on indictment by three years' imprisonment with or without hard labour. (s. 73, 6). Sketching, drawing, photographing, etc., fortifications or other works of defence may be punished by a fine of £100 or six months' imprisonment without any option (s. 82, 1). There is a penalty of £20 for bringing contempt on the uniform (s. 84). Courts-martial are provided for in Part VIII. Little here calls for remark, but s. 96 may be noted: "if the offence charged be punishable by death," the prisoner "shall be entitled to be defended by counsel at the expense of the Crown"—which applies to any offence under this Act (s. 103). Such offences may be tried either by court-martial or by a civil Court (s. 102). Nothing in this Act is to prevent any member of the Defence Force from volunteering to serve in the King's forces beyond the Commonwealth (s. 117). The power of making regulations, generally, is vested in the Governor-General (s. 124). *Inter alia* he may fix the amount and nature of the security which officers and others holding positions ought in the opinion of the Minister to give for their fidelity (*ibid.*, *e*) and he may prescribe "the insurance of their lives by married members of the permanent forces for the benefit of their wives and families" (*ibid.*, *h*).

Navy (No. 8).—The interest of this statute—the Naval Agreement Act—lies in the schedule which recites an agreement (not, *semble*, published elsewhere) between His Majesty's Government and the Commonwealth and New Zealand, the preamble of which states that the parties "having recognised the importance of sea power in the control which it gives over sea communications, the necessity of a single navy under one authority, by which alone concerted action can be assured, and the advantages which will be derived from developing the sea power of Australia and New Zealand," have made this agreement. It is emphatically an Imperial document. The Act formally appropriates money in pursuance of it.

Patents (No. 21).—This Act is avowedly founded on 46 & 47 Vict., c. 57, and succeeding Acts. A commissioner has chief control of the Department of Patents "under the Minister" (s. 10). Any person "whether a British subject or not" may apply for a patent (s. 32). The term of a patent is fourteen years (s. 64). "A patent shall to all intents have the like effect against the King as it has against a subject" (s. 92). The Commonwealth or a State may acquire patents compulsorily (ss. 93, 94). A new class of "patent attorneys" is created (s. 101). It may be added that the fifty-years' rule of 2 Ed. VII., c. 34, ss. 1 and 2, is here (ss. 60, 89) applied, with the limitation of the use of the prior patent *to Australia*.

2. NEW SOUTH WALES.

[*Contributed by the* PARLIAMENTARY DRAFTSMAN *of the State.*]

Acts passed—21.

Influx of Criminals Prevention (No. 6).—This Act applies to certain prohibited immigrants defined in s. 3, sub-ss. (*e*) and (*f*) of the Commonwealth Immigration Restriction Act, viz. persons who have within three years been convicted of an offence (not being a political offender) and have been sentenced to imprisonment for one year or longer, and any prostitute or person living on the prostitution of others. The entry of such immigrants into the Commonwealth is prohibited. If any prohibited immigrant is found within the Commonwealth in contravention of the Act, he is, under the Commonwealth Act, liable to be convicted and imprisoned.

The New South Wales Act provides that if any person so convicted comes into New South Wales within three years after the termination of any imprisonment suffered by him in respect of such offence, he shall be guilty of an offence against the Act.

The Act also applies to any person who in any other State of the Commonwealth has been convicted of any offence for which in that State he was liable to suffer death or to be imprisoned for one year or longer.

A person on being convicted of an offence against the Act is liable to imprisonment for twelve months and to be deported, but may be released from imprisonment for the purposes of deportation, or on entering into recognisances with sureties to leave New South Wales and not return within three years, or to be of good behaviour for five years. If the person breaks his recognisances, or having left New South Wales returns within three years, he is guilty of an offence against the Act.

Masters of vessels bringing into New South Wales any person who, to their knowledge, has been convicted in any other State of the Commonwealth of an offence for which in that State he would be liable to suffer death or to be imprisoned for one year or longer, is liable to a penalty of £100 and to be imprisoned for six months.

Power is given on the warrant of a justice to search houses and vessels, and to apprehend persons suspected of being guilty of an offence against the Act.

Public Service (Superannuation) (No. 8.)—S. 2 of the Act provides for the future payment of pensions. Under the Civil Service Act of 1884 a Superannuation Account was established to which civil servants paid 4 per cent. of their salaries, being entitled to be paid out of the fund a pension on their retirement on attaining the age of sixty, or on their offices being abolished.

By the Public Service Act of 1895, the payment of pensions was abolished

as to persons joining the service after the passing of that Act, but the Superannuation Account was heavily burdened by pensions then payable and to become payable under the former Act.

For reasons partly attributable to the original scheme of contribution, and partly attributable to the various dismissals and retrenchments of the Government, the money at credit of the account has sunk lower and lower, and, by s. 2 of the Act, provision is made that on the Superannuation Account becoming exhausted, payments formerly made into and out of that account shall he made into and out of the Consolidated Revenue Fund.

Under s. 6 a contributor to the Superannuation Account may cease contributing, in which case there will be paid on his resignation or death a refund of the amount of his contributions with interest, and a gratuity on the scale provided by the Consolidation Act of 1902.

S. 4 enables gratuities to be paid to railway officers who ceased to contribute to the account.

S. 5 enables certain persons to be reinstated on the fund.

S. 7 relates to service in the Government Printing Office, which is to count in computing the amount of a pension or gratuity.

S. 3 extends the period during which any person may be temporarily employed in the public service.

Senators' Elections (No. 9.)—The Act provides, in accordance with the Commonwealth Constitution Act, for the times and places of elections of senators for New South Wales.

Juvenile Smoking Suppression (No. 11).—A bill on this subject has been before the legislature since 1899. In the form in which it was introduced, it imposed a penalty on young persons under sixteen years of age smoking tobacco in any public place, public conveyance, etc., and a penalty on any dealer supplying any such person with tobacco, cigars, or cigarettes. During its passage the former provision was eliminated, and the Act now provides that any dealer in tobacco, cigars, or cigarettes and any licensed tobacconist or other person who supplies any person actually or apparently under the age of sixteen years with tobacco in any shape or form, cigars, or cigarettes, shall be liable to a fine not exceeding £5.

Bills of Sale (Amendment) (No. 12).—Cases of hardship and distress had arisen where a husband had, unknown to his wife, given a bill of sale over the household furniture in use by them. When seizure was effected under such a bill of sale, it frequently left the wife in destitute circumstances. To as far as possible prevent such an occurrence, this measure was introduced and passed into law. It provides that no bill of sale made or given by either of a married couple who are living together shall have any effect, so far as seizure is concerned, as to the household furniture actually in use by either of them, unless the bill at the time of execution is endorsed with the consent of the wife or husband of the maker or giver thereof.

Reduction of Members Referendum (No. 13).—The Act provided for

a reference to the electors of the question whether the number of members of the Legislative Assembly should be reduced below the number of 125. The form of voting paper in Schedule 1 gave the voter the option of voting for 125 (the present number), or 100, or 90. The vote was to be taken, and was taken on the day fixed for the election in New South Wales of Senators of the Commonwealth Parliament. The method of voting was to mark the voting paper with the figures 1, 2, and 3, indicating the order of the voter's preference. After the voting, the papers were sent to the returning officer, who determined the result of the voting in the manner prescribed by Schedule 2 to the Act. The manner of counting the votes is an adaptation of that known as the Hare-Clarke system as used in Tasmania. The papers are arranged in three parcels according to the voters' first preference for 125, 100, or 90 members, and unless this count shows that majority of the votes given in favour of one of the number of members proposed, the papers in the parcel having the least number of votes are distributed among the other two parcels according to the voters' next preferences, and the parcel having after this distribution the greater number of papers determines the result of the vote.

The vote under this Act was taken, and the result was that on the first count a majority of the votes given was in favour of a reduction of the number of members to 90.

Crown Lands Act Amendment (No. 15).—The main principle of this Act, which amends the numerous Crown Lands Acts passed since 1884, is to provide that holders of Crown lands under conditional purchase, homestead selection, or settlement lease may be able to extend the areas held by them so that they may obtain what may be described as a "living area." The policy of earlier legislation has been to put the people on the land: the policy of the new Act is to keep them on the land by providing for an extension of their holdings or an extension of the term of their leases where such extension is necessary for the profitable working and use of the land. Very large discretion in granting applications for such extensions is given to the local land boards, and a board may grant an extension of area although in excess of that previously allowed, and although the added land may not adjoin the land already held, but in every case the application must not be granted unless the additional area is necessary for the maintenance of the applicant and his home. The above provisions are chiefly contained in s. 3, and by s. 30 the right to apply for an additional area is extended to the holder of freehold land not taken up under conditional purchase. This extension will principally apply to the older settled parts of the State, and it is hoped will lead to the improvement of inferior lands in the Eastern Division. Directions are given to the land boards as to the exercise of their discretion in granting or refusing applications, and provision is made in s. 4 for setting apart land for the extension of holdings and fixing the prices and rents.

By s. 11, in furtherance of the policy of extending the areas of holdings, power is given to the holder of a conditional purchase, homestead selection, or settlement lease to acquire by transfer or exchange additional areas, and perform the conditions of residence on any of such holdings.

The terms of settlement leases are, by s. 5, extended to forty years, to count, in the case of an existing lease brought under the section, from the commencement of the original lease. The rent for the first ten years is determined by the Minister, subject to appeal to the Land Board, and at the end of every subsequent period of ten years the rent may be determined by the board at the instance of the Minister or lessee.

Similar provisions are made by s. 6 with respect to conditional leases.

SS. 7 and 9 relate respectively to the rents of homestead selections and improvement leases.

SS. 8 and 10 provide that the estate of a conditional purchaser, homestead selector, or lessee may, on his death or on his being declared a lunatic, be held by his representative for twelve months without residence.

S. 12 is drawn to give mortgagees and judgment creditors a better security over homestead selections and settlement leases, so as to enable the holders to borrow money. It provides that the mortgagee or creditor shall have twelve months after taking possession, or such further time as the Minister allows, to find a purchaser, and that, in the meantime, the condition of residence may be performed by a nominee of the mortgagee or creditor. Proceedings under the section shall not be taken until two years after the passing of the Act, or until twelve months have elapsed after default by the mortgagor, or after judgment signed.

SS. 13 and 14 make certain reductions in the interest payable on the balances due on conditional purchases, but only apply where the land is resided upon, and to a "living area."

S. 15 allows the Minister to accept deferred payment of moneys due.

S. 16 allows parents to apply for land for their children, and s. 19 provides for residence on family holdings. S. 17 allows a married woman to acquire Crown lands. S. 20 makes new provision as to ballot for applications made simultaneously. S. 21 allows the holder of a residential lease to increase his holding to twenty acres; and by s. 22 homestead selections and settlement leases may be taken up before survey.

By s. 18, the holder of a pastoral lease, preferential occupation licence, or occupation licence may, subject to the conditions of the section, apply for a lease of an additional area not exceeding one-third of his holding, following a similar enactment in the Western Lands Act.

S. 23 enables the holder of an annual lease to apply for an improvement lease, for seven years, of such portion of his land sufficient to support a family.

S. 24 reduces the upset price for auction and after auction sales from 25*s.* to 15*s.* per acre.

S. 25 allows a settlement lessee, after five years' tenancy, to apply to convert any area not exceeding 1,280 acres of his holding into a homestead selection, but the granting of the application is in the discretion of the Land Board.

S. 26 allows the enclosure of roads.

S. 27 allows the holder of a conditional lease in the Eastern Division to take up the whole of the lease as a conditional purchase, although its area may exceed 640 acres.

SS. 28, 29, 31, 32, and 33 make other amendments in the Crown Lands Acts.

Sydney Harbour Trust Leasing.—No. 16 extends the power of the Sydney Harbour Trust Commissioners to grant leases for any term not exceeding forty-two years at a rent to be increased at the end of each period of fourteen years by 5 per cent. on the amount of the increase (if any) on the unimproved value of the land.

Friendly Societies (No. 17).—This Act amends the Friendly Societies (Further Amendment) Act, 1901, by providing that the provision requiring separate accounts of contributions to and payments from the funds shall relate to members joining before and after January 1st, 1903, instead of to members joining before and after the registration of the society, which by the Friendly Societies Act, 1899, must be within twelve months from the commencement of that Act.

Native Animals Protection (No. 18).—It was found that certain native animals, owing to inadequate protection, were in danger of becoming extinct. To prevent this, the above-mentioned measure was introduced and passed. It fixes a period of absolute protection, and after that a definite close season for the native animals named in the schedule, and provides that the Colonial Secretary may, by a *Gazette* notice, add to the schedule the names of any other native animals, or remove any name already there.

The Colonial Secretary may also, by a *Gazette* notice, vary the periods of absolute protection or close seasons, and make them conform to the requirements of any particular districts in the State.

S. 11, which affords protection to birds, was added because, although there is a Birds Protection Act in force, yet under its provisions there was no power conferred of fixing a period of absolute protection for any bird, and it was found that this was necessary to preserve the existence of certain birds, notably the "lyre bird."

Commercial Causes (No. 19).—Commercial men had for some time been complaining of the law's delays occasioned by the procedure under the Common Law Procedure Act. In order, as far as practicable, to overcome these, the Attorney-General, in the Upper House, introduced this bill. It is modelled upon the Rules of Court dealing with commercial causes now in force in England. As originally introduced, the bill gave the judge power, *inter alia*, to order every cause to be tried without a jury. This was

modified during its passage through the Lower House by the addition of the words "unless a jury shall be demanded by either party." With this exception the Bill passed through all its stages as introduced. Rules of Court have been made under the Act, but, so far, no opportunity has been afforded of judging whether the Act will succeed in its object—the shortening of causes dealing with commercial matters.

Government Savings Bank (Amendment) (No. 20).—This Act increases the amount to which deposits may be received in the Bank from £200 to £300, and provides for minor amendments in the Government Savings Bank Act, 1902.

3. QUEENSLAND.

[*Contributed by* W. F. Craies, Esq.]

Acts passed (Session 3 Ed. VII.)—11.

Appropriation.—Nos. 1, 3, and 11 are Appropriation Acts.

Senatorial Elections.—No. 6, in exercise of the powers given to the State by the Commonwealth Constitution,[1] fixes the places for nomination and declaration of the poll on the election of senators to the Commonwealth Parliament, and provides for the mode of fixing the dates of nomination, polling, and return, and the places for polling.

Supreme Court.—No. 9 provides that the number of judges in the Supreme Court shall not be less than four nor more than five[2] (s. 3), and as to the mode of determining who is to be the senior puisne judge of the Court (s. 2).[3]

Interpretation and Editing of Statutes.—No. 10 amends the Acts Shortening Act of 1867 by incorporating in it new clauses, based on ss. 11, 20, 26, 31, 37, and 38 of the Imperial Interpretation Act, 1889.[4] It also gives short and collective titles to many Acts in force in Queensland, and amends verbal errors in the text and marginal notes of a large number of enactments. But its most important clause is the following, which makes general a practice previously prescribed in many particular Queensland Acts, and will tend to an almost automatic consolidation of the chief titles in the statute-book:

> 29. A. (1) When by any Act, whenever passed, any section or schedule or any word or words is or are directed to be inserted in or omitted from any previous Act, or any section or schedule thereof, or to be substituted for or inserted in lieu of any

[1] 63 & 64 Vict., c. 12, s. 9, chap. i., s. 9.

[2] Under an Act of 1889 (No 17, s. 7) the number had been fixed at five.

[3] Under the Act of 1889, s. 9, other provision was made as to the senior puisne judge.

[4] 52 & 53 Vict., c. 63.

section or schedule, or any word or words forming part or the whole of any section or schedule of any previous Act, then in all copies of the Act so amended, printed by the Government printer, the section or schedule or word or words shall be inserted or omitted in accordance with such direction, and all necessary consequential amendments of marginal notes, headings, and divisions shall be made. And references shall be made in the margin to the section or sections of the Act by which such amendments are made:

Provided that no amendment shall merely by force of such direction have any retrospective operation

(2) Whenever any enactment or any Act relating to the practice or procedure of the Supreme Court has been or shall hereafter be in pursuance of statutory authority on that behalf abrogated by rules of the Supreme Court, then in all copies of such Act printed by the Government printer the enactment so abrogated shall be omitted, and reference shall be made in the margin to the Rules of Court whereby such abrogation was made.

Rabbits.—No. 4 continues for six years the Rabbit Boards Act of 1896,[1] and amends s. 22 of that Act as to the assessment of expenses on cattle or sheep runs held under lease or licence from the Crown.

Local Authorities.—No. 7 amends s. 193 (iii) of the Local Authorities Act of 1902,[2] as to lands to be exempted from rating. The exemption now runs:—

(iii) Land in the occupation of any person or corporation which is used for public purposes, also land vested in or for the time being under the control of any person or corporation under or in pursuance of any statute for the purposes of any acclimatisation society, or for the purposes of a show ground or for public recreation or athletic sports or games, or for purposes of public charities.

Stamps.—No. 2 repeals the temporary Stamp Act Amendment Act of 1901[3] and provides for the insertion in the Stamp Act of 1894 (58 Vict., No. 8) of an *ad valorem* duty on receipts for money, and penalties for evading the duty are imposed.

Railways.—Nos. 5 and 8 authorise the construction of railways connecting certain mines with the Northern (State) Railway.

4. TASMANIA.

[*Contributed by* J. W. Fearnsides, Esq.]

Acts passed—Public, 27; Private, 19.

The number of Acts passed during the Session of 1903 was forty-six, of which twenty-seven were public general Acts. The only Act calling for special comment is that by which the franchise has been extended to women.

Appropriation.—Nos. 2 and 41.

Bank Holidays (No. 4).—Nine days in the year are constituted bank

[1] Journal, N.S., vol ii. p. 177. [2] Journal, N.S., vol. v. p. 363.
[3] Journal, N.S., vol. iv. p. 268.

holidays, including the birthday of the Sovereign and of the Prince of Wales. Power is given to the Governor to appoint a special bank holiday from time to time as he may think fit.

Constitution: Female Franchise.—No. 17 extends the right of voting for the Legislative Council and for the House of Assembly to women, but does not make them eligible for election as members of either body.

Dentists (No. 18).—A Board of Examiners is created for conducting examinations and granting certificates and licences, and consists of three medical practitioners and three dentists. The original and subsequent appointments to the Board are made by the Governor upon the written recommendation of the Court of Medical Examiners. A Dentists' Register is to be kept, containing the names of all persons registered under this Act. Unregistered persons (other than legally qualified medical practitioners) are not to use the title "dentist," nor may they receive fees, under a maximum penalty of £50.

Any person registered, or entitled to be registered, in the United Kingdom as a dentist or medical practitioner is, equally with those who have received certificates and licences from the Board of Examiners, qualified for registration under this Act.

Legal Procedure (No. 19).—By this Act, in every civil cause or matter commenced in the Supreme Court under the provisions of the Common Law Procedure Act of 1855, and every amendment thereof, or under the Local Courts Act, 1896, law and equity are to be administered by the Court concurrently, and where there is any conflict between the rules of equity and the rules of common law with reference to the same matter, the rules of equity are to prevail.

Police.—No. 24 prescribes the accommodation requisite for each inmate of a common lodging house and for each person admitted to a place of public entertainment.

Public Health (No. 37).—This Act contains 186 sections, and is divided into nineteen parts.

A Department of Public Health is constituted, with a Minister at its head. A Chief Health Officer, assistant health officers, and inspectors may be appointed by the Governor. Local medical officers of health are to be provided, also local inspectors.

Minute and careful regulations are laid down for the prevention of infectious diseases, very wide powers being given to the Chief Health Officer for this purpose. If it become necessary to destroy any building, animal, or thing, the owner may be compensated. The Chief Health Officer or a local officer of health may order a school to be closed.

Hospitals may be provided by a local authority, and must be where the Chief Health Officer so requires. Recovery of cost of treatment and maintenance in hospital is made a debt due from the patient (if he be not a pauper) to the local authority, and may be recovered accordingly.

Mortuaries and morgues are to be provided by the local authority. Houses are to have efficient drains and cesspools, and cleansing and scavenging are made obligatory. Pollution of watercourses is inhibited.

Borrowing powers for carrying out sanitary works are conferred on local authorities, subject to certain conditions.

A considerable portion of the Act is concerned with nuisances and the carrying on of offensive trades.

A local authority may, and if recommended by the Chief Health Officer must, make by-laws under this Act, which must be confirmed by that officer, and, previous to such confirmation, must have been certified by the Attorney or Solicitor-General of the State not to be repugnant to any law of the State or to the provisions of this Act, and must also be laid before Parliament.

Adulteration of articles of food or drugs is prohibited, and to effect this public analysts are to be appointed.

For infant life protection it is enacted that no person shall receive into his house for hire more than one infant under two years for the purpose of nursing apart from the parents for more than twenty-four hours except in a house registered under this Act. The register is to be kept by the local authority. An inquest must be held relative to the cause of death of any infant in such registered house unless a certificate be produced to a Coroner under the hand of a medical practitioner specifying cause of death. No such infant shall be buried without the production of a certificate under the hand of the coroner authorising such burial.

Dwelling-houses may be declared unfit for habitation, and their occupation forbidden. Occupation of cellar dwellings or underground rooms is made illegal.

A local authority may make by-laws with regard to the construction of new streets, new buildings, drainage and cesspools. A local authority and its officers are to be protected for anything done by it or them in executing this Act.

Crown Lands (No. 39).—This is an Act of two hundred sections divided into fifteen parts. The Commissioner of Lands and Works is the Commissioner of Crown Lands. A Surveyor-General and a Conservator of Forests may be appointed by the Governor, and bailiffs of Crown lands by the Commissioner.

The Governor may except from sale and reserve land for the growth of timber, and for public purposes, such as public roads and places of public recreation, but no land may be so reserved as a site for a place of public worship or for any other religious purpose.

Persons who have already purchased land and have not complied with certain conditions incidental to such purchase are not eligible to select under this Act.

No person under the age of eighteen years can purchase land, and

purchasers between that age and twenty-one years are to be liable upon contracts for purchase and for any matter in relation thereto.

Certain lands may be sold by public auction, having been previously surveyed. Land is not to be so sold at less than the previously advertised upset price. Land not being within five miles of any city may be sold by private treaty upon certain conditions.

The Governor may declare any gold-field, portion of Crown land, a mining area, whereupon it is only subject to restricted rights of purchase, and the land so sold is open to be searched for gold or other metals or minerals by any person, the owner being allowed compensation for any damage which may be done to his land. Lands are divided into town lands, first-class agricultural, second-class agricultural, and third-class agricultural land, for which the conditions of purchase upon credit vary, as do the conditions as to improvements which must be effected to the land before the purchaser upon credit is entitled to a deed of grant constituting him indefeasibly the owner. On failure in payment of any instalment land may be forfeited.

Sale of land in mining towns is provided for, half purchase money of which may be expended on public works.

Leases not exceeding fourteen years may be granted by the Commissioner, with the consent of the Governor, for wharves, manufactories, railways or tramways, and for grazing purposes. Licences for felling timber upon, removing gravel from, and hunting upon land may be granted by the Commissioner; also "occupation," "residence," and "business" licences for no more than twelve months may be issued by him.

Lands may be resumed by the Crown for mining upon payment of compensation. Penalties are prescribed for those who are in unlawful possession of Crown land, and a summary remedy is given for dispossessing such persons.

Machinery is provided whereby money can be raised for making roads and for making streets and other improvements in towns.

5. VICTORIA.

[*Contributed by* C. J. Zichy-Woinarski *and* W. Harrison Moore, Esqrs.]

Constitutional Reform.—Of the group of Acts which fall under this head, the principal is the Constitution Act, 1903 (No. 1864), which was reserved for the Royal Assent on April 7th, and proclaimed on November 26th. The general object of the measure is a reduction of the scale and cost of central government in obedience to a demand for retrenchment consequent upon the transfer of important services from the State to the Commonwealth. The maximum number of salaried Ministers is reduced from ten to eight, and their salaries from £10,400 to £8,400; and the number of members of

the Leglislative Council and Assembly is reduced from forty-eight to thirty-five and ninety-five to sixty-eight respectively. In the case of the Council, two-member constituencies are substituted for the old three- or four-member constituencies, and in the case of the Assembly, the single-member district is now made universal. The reduction of Ministers and members originally proposed was even more drastic; but the scheme was modified in this, as in some other respects. Amongst the proposals abandoned was women's suffrage. The freehold qualification still required of members of the Council was reduced from £100 to £50 annual value; and the qualification of electors based on a municipal valuation of £25 annual value was reduced to £15. The qualification of electors and members of the Assembly was unaltered, save for a provision checking the issue of voters' certificates so as to hinder the packing of constituencies before an election. There are several novel features in the Act. First, the Continental system whereby Ministers are permitted to speak in either House is adopted in a modified form in s. 9, whereby, with the consent of the House, a "responsible Minister of the Crown" may sit in that House of which he is not a member for the purpose of explaining any Bill relating to or connected with any department administered by him, and may take part in any debate or discussion therein on such Bill. Secondly, the Act requires that any responsible Minister of the Crown shall secure a seat in Parliament within three months of his appointment upon pain of loss of office (s. 6)—a provision taken from the Commonwealth Constitution, and a step onwards in the statutory recognition of Cabinet Government. Thirdly, the Act contains a distinctive and remarkable change in respect to public servants. "Public officers" and "railway officers" possessing the ordinary electors' qualifications are taken out of the territorial constituencies of which they have hitherto been a part by reason of residence or property, and are formed into a single constituency returning one member to the Council, and two constituencies returning respectively one member for the "public officers" and two members for the "railway officers" to the Assembly. Any public servant may be elected, and is regarded during his service in Parliament as on leave of absence without pay (ss. 25-9). Next there are some important provisions as to the relations of the Council and Assembly, a matter which in the past has brought about more than one grave crisis in Victoria. First, as to money bills, the long-standing dispute as to the interpretation of the provisions in the Constitution Act, 1855 (see Hearn's *Government of England*, Appendix IV. p. 613), is terminated by a statutory compromise, the most important feature of which is the adaptation of a scheme of the Commonwealth Constitution (s. 30). In those cases in which the Council may not amend a bill it is permitted to make suggestions at certain definite stages, but so that the suggestion may not be repeated until the bill has been advanced another stage. This is a limitation dictated by the experience of the Commonwealth, where the Senate has insisted on

its power to repeat and press suggestions in a way which makes the power hardly distinguishable from a power to amend. For the settlement of disputes between the Houses, the Constitution again draws inspiration from the Commonwealth Constitution. S. 31 enacts that if the Assembly passes any bill, and the Council rejects or fails to pass it, or passes it with amendments to which the Assembly will not agree, and the Assembly is dissolved by proclamation declaring the dissolution to be in consequence of the disagreement, and the Assembly again passes the Bill, the Governor may dissolve the Council and Assembly simultaneously. Here the machinery for settlement of disputes somewhat abruptly ends. It was part of the scheme that the simultaneous dissolution should be followed by a joint sitting of the Houses, but the Council refused to accept the proposal. There are certain limitations imposed on the scheme to ensure that the first dissolution shall really be a special dissolution, and not the dissolution of an expiring Parliament, and to prevent the simultaneous dissolution being held indefinitely over the head of the Council. The scheme is not to apply to proposals for the amendment of the Constitution under s. 60 of the Act of 1855.

The Electoral Districts Boundaries Act (No. 1895), the Electoral Provinces Boundaries Act (No. 1896), and the Electoral Rolls Act (No. 1872) are consequential machinery Acts. The Ministers and Special and other Appropriations Retrenchment Act (No. 1849) sufficiently indicates its character by its title; the reductions range from 3 per cent. on salaries between £125 and £150, to 10 per cent. on salaries of £1,000 and upwards.

Electoral Expenses.—The Electoral Expenses Limitation Act (No. 1891) is in its principal feature based upon Lord James of Hereford's Act of 1883. It specifies the objects upon which electoral expenses may lawfully be incurred, and fixes the maximum amount of expenditure by a candidate in a Council election at £400, and in an Assembly election at £150. Candidates are to be allowed the free use of State school buildings for meetings, but must pay for the cost of lighting, cleaning, and repairing any damage (s. 12). S. 14 deals with a matter outside the Act—the publication of false statements concerning a candidate, upon which it adopts the provisions of the English Act, 58 & 59 Vict., c. 40. The last section of the Act is somewhat mysterious, and if it is literally construed may go a long way to undo the rest of the Act in relation to Council elections. It declares that "no candidate for election as a member of the Legislative Council shall be chargeable with any electoral expenditure under this Act, unless the expenditure by him or on his behalf shall be expressly authorised in writing by such candidate and signed by him."

Local Government[1] (No. 1893).—This was a very important and comprehensive Act. Though it introduced few new principles, it consolidated

[1] This statement has been contributed by J. T. Collins, Esq., one of the draftsmen of the Act.

eighteen statutes, and contained a number of amendments and new provisions to facilitate administration. In Victoria, apart from the city of Melbourne and the town of Geelong, which are governed by special Acts, the whole State is divided into municipal districts, subject to the control and management of municipal councils. The rural and sparsely settled districts are generally denominated "shires," and the urban and more populous districts "boroughs." The scheme of local government was initiated in 1854 by the Municipal Institutions Act, which provided for the creation of municipal districts of limited extent in the more settled parts of the State. In 1863 the Road Districts and Shires Act dealt in like manner with the less settled areas. In 1869 two Acts were passed concurrently, the Boroughs Statute for urban districts and the Shires Statute for rural districts, in which the provisions of the former Acts were re-enacted and the powers of councils extended. These in turn were amalgamated in the Local Government Act, 1874, which was included in the general consolidation of the statutes in 1890. Subsequently, a great many Amending Acts were passed, and suggestions made for further amendments; and in 1889 a Parliamentary committee, which afterwards became a Royal Commission, was appointed to enquire into and report upon the numerous amendments required in the law relating to local government. The report of the Royal Commission was completed in 1902; and as part of that report the Commission submitted a draft bill which, with slight alterations, was passed by Parliament and became the Local Government Act, 1903. In its report the Commission said: "After mature consideration, we find that the scheme of local government which was initiated in Victoria by the Municipal Institutions Act of 1854, and which has been continued and developed with the progress of the State, has resulted in the establishment of an efficient and satisfactory system of local self-government. The powers given to local bodies by the early enactments were extensive, and have from time to time been largely increased, so that they now embrace practically all matters which are included in the most advanced systems of local government in operation in the United Kingdom and other parts of the world. Two hundred and six municipalities have been constituted under the Local Government Acts, and the districts under their control, with the trifling exception of one small area of mountainous country, now extend over every portion of the State."

Briefly, the scheme of local government is as follows: The Governor in Council is empowered, upon petition by the inhabitants of any area, to constitute it a municipal district. The district may be constituted a borough or a shire; in the former case, the area must not exceed nine square miles, and the population must contain at least five hundred inhabitant householders; in the latter case no restrictions as to area or population are imposed. A borough, when it has a certain revenue, may be declared a town, and with a higher revenue a city. The inhabitants of each municipal district are a corporation, governed by a council elected by the ratepayers,

the franchise being based upon the value of their ratable property. For the good rule and government of the municipality, the council has extensive powers for making by-laws and regulations. The funds and revenues are derived for the most part from rates which are made and levied upon the occupiers and owners of all lands according to the net annual value, which is in no case reckoned at less than 5 per cent. on the capital value. Where works are carried out for the special benefit of any particular part of a district, special rates and charges may be made upon occupiers and owners of the properties benefited by the works. Municipalities have wide powers for the construction and management of works and undertakings, as, for example, street works and tramways, bridges, ferries and jetties, drainage and sewerage works, sanitary works, waterworks, electric light and gas works, markets and abattoirs; and they may provide baths and washhouses, pleasure grounds, libraries, museums and places of recreation, hospitals and asylums. In order to carry out permanent works and undertakings they may, if necessary, borrow moneys not exceeding in amount, in ordinary cases, ten times the average annual income for the three years preceding the loan. In addition to the foregoing powers and duties, each council is a local board of health under the Health Acts, and is charged with the administration of almost all acts of local concern. In many matters the discretion of the municipal council is unfettered, but in others, and especially where the rights of the general public are concerned, the acts of council are subject to the control of the Governor in Council. Technically, the "Governor in Council" means the Governor with the advice of the Executive Council; in practice, the responsibility rests with the Minister of Public Works, who acts under the guidance of the permanent officers of his department.

Factories and Shops (No. 1857).—The principal feature of this Act is the establishment of a Court of Industrial Appeals for dealing, either on appeal or on reference by the Minister, with the determinations of the Special Boards for fixing a minimum wage which have been in existence since 1896. The Court consists of a judge of the Supreme Court, who may appoint representatives of employers and employed as assessors (s. 18). Barristers, solicitors, or agents are not to be employed, except by the consent of the parties or order of the Court. By the principal Act of 1896 (s. 15 [1]), the Special Boards, in fixing the lowest price or rate for work, are to take into consideration the nature, kind, and class of the work, and the mode and manner in which the work is to be done, and any matter which from time to time may be prescribed. By the new Act, the Special Boards and the Court in dealing with appeals or references are to have regard to the following principles: (s. 14). They are to ascertain the average prices or rates of payment paid by reputable employers to employees of average capacity. The lowest prices or rates fixed shall in no case exceed the average prices or rates as so ascertained. Where it appears to be just and expedient, special wages, prices, or rates may be fixed for aged, infirm, or slow workers.

Where the average prices or rates ascertained are not in the opinion of the Special Board sufficient to afford a reasonable limit for the determination of the lowest prices or rates which should be paid, they may so report to the Minister, who shall in such case refer the determination for the consideration of the Court, and the Court may in that event fix the lowest prices or rates to be paid without regard to (*b*). The jurisdiction of the Courts of Appeals includes a power to review determinations of Boards prior to the Act, and in dealing with such cases the Court shall consider (s. 16) whether the determination appealed against had had or may have the effect of prejudicing the progress, maintenance, or scope of employment in the trade or industry affected, and may make such alterations as may be necessary to remove or prevent such effect, and at the same time to secure a living wage to the employees in such trade or industry. In various other ways the Act, using the experience gained since 1896, sets bounds to the operation of this class of Acts. By s. 24, no determination of a Special Board shall apply to any children of the employer; and s. 25 provides that it shall not apply to country districts except upon petition of the shire council. By s. 7 the indulgence extended to aged and infirm workers who are unable to earn the minimum wage is extended to "slow" workers, with a limitation, however, of the number of slow workers to be licensed for any factory. The proposal to make the scheme of the Act of 1896 permanent was not carried, and this Act continues the operation of that Act, as amended by subsequent Acts, including that now under notice, for a term ending December 31st, 1905.

Old Age Pensions (No. 1865).—In addition to amendments of the machinery of the Principal Act of 1901, this Act provides that unless the total sum payable for pensions during any year will not amount to £150,000, the Treasurer shall not without further Parliamentary appropriation authorise the grant of new pensions involving the expenditure of an amount greater than that expended on pensions ceasing to be in force (s. 6). Any property of the pensioner vests at his death in the State, and to the extent of the total amount received by way of pensions shall be devoted to repayment of the State; and any transfer which has been made in defeasance of this right is void unless the transferee proves that he had no knowledge that the transferor was a pensioner (s. 7). All moneys paid by way of pension to any person are on his death to be deemed a debt payable to the Crown, but with the consent of the Treasurer any debts necessarily or properly incurred by or on behalf of the pensioner may be paid out of the estate.

Health (No. 1866).—By this Act various amendments are made in the Health Act, 1890, and amongst other things more careful provision is required to secure cleanliness in places used for the milking or keeping of cows or the keeping of pigs; and municipal councils are empowered to order the necessary works to be carried out. S. 5 contains an interesting provision for the division of the cost of works between landlord and tenant. Where the interest of the tenant has less than three years to run, the land-

lord bears the whole cost; where there is more than twelve years to run, the tenant bears the whole. For the intermediate terms, up to six years the landlord pays three-fourths; between six and twelve years the cost is equally divided.

Savings Banks (No. 1878).—This Act relates to the system of advances to farmers and other landowners by the Commissioners of Savings Banks inaugurated in 1896. The Commissioners are empowered to raise the rate of interest to 5 per cent.; the total amount which may be advanced on mortgage is raised from two to three million pounds; and the total amount of debentures which may be issued for the purpose of making advances is raised from one to two million pounds.

Legal Practitioners' Reciprocity (No. 1887).—This Act is more comprehensive than its title, for in addition to providing that legal practitioners admitted in any State of the Commonwealth shall be admitted to practise in Victoria, it establishes a Council of Legal Education with plenary power to make regulations concerning the qualifications for admission of barristers and solicitors. This includes a power to prescribe courses of study, and to provide for the admission of English, Irish, and Scotch "legal practitioners, howsoever styled," and thus removes the barrier imposed, probably by inadvertence rather than design, by the Act of 1891. In the case of practitioners from other States of the Commonwealth, admission is conditional upon the reciprocal admission of Victorian practitioners. The Council is to consist of the Judges of the Supreme Court, the Attorney-General and Solicitor-General, and the Dean of the Faculty of Law in the University of Melbourne *ex officio*, and representatives appointed by the Council of the University of Melbourne (two), the Law Institute (three), and the Committee of Counsel (three), the last two bodies embracing members of the legal profession practising as solicitors and barristers respectively, for the distinction remains in substance, though the professions were formally amalgamated by the Act of 1891. Rules made by the Council are to be transmitted to the Governor in Council, and are to be laid before Parliament, and come into operation, unless within one month after they have been laid before Parliament either House passes a resolution disallowing them.

Administration and Probate (Nos. 1 and 2: Nos. 1815 and 1862).—These two Acts merely amend the rates of duty or tax payable by the estates of deceased persons in the State of Victoria. The duty or tax is in the nature of a succession duty; it is made a condition of the issue of a grant of probate or of letters of administration; it is deducted from the estate while it is in bulk and before the process of administration begins; it is chargeable on real and personal estate and against every legatee; and it varies in rate according to the relation of the successor to the deceased. For many years the minimum estate which in Victoria paid such duty or tax was one the net value of which exceeded £1,000, and the duty ranged from £2 per cent. for such minimum, and rose until a

maximum of £10 per cent. was reached on estates of and over £100,000 net value.

The desire to earn more revenue from this source caused the first of the above two Acts to be passed in the Session 1902-3, and it was an Act made to operate for the period only between December 31st, 1902, and January 1st, 1904. The second of these Acts extended (with very slight modifications) the provisions of the first amending Act for a further period of twelve months (December 31st, 1903, to January 1st, 1905).

Generalising the two above Acts, it may be said that they cause the duty or tax to fall on estates of a net value of £200 and upwards, and the duty or tax to range now from £1 per cent. for such minimum estate and to rise until the maximum of £10 per cent. is reached on estates of and over £20,000 net value. The progress from the £1 per cent. to the £10 per cent. is made more gradual and detailed than in the principal Act; in estates which go to widows and children the progress towards the higher duty is very much slower than in the principal Act. It starts with £1 per cent. on estates exceeding £200 in value and not exceeding £500, and it does not reach the maximum of £10 per cent. until the estate exceeds in value £100,000, and it is graduated the whole way.

Companies.—The Companies Act, 1903 (No. 1886), is also an amending Act. The Companies Act of 1896 contained, *inter alia*, provisions analogous to ss. 14-18 inclusive of the Imperial Act, 63 & 64 Vict., c. 48, in relation to mortgages and charges given by a company as security, and compelling their registration as a condition of validity. In Victoria the Bills of Sale Act (the Instruments Act, 1890), and the Assignment of Book Debts Act, 1896, were two other Acts in force requiring the registration of securities in Victoria, and doubts arose under the Companies Act, 1896, whether mortgages and charges given by companies required for their validity that they should be registered under these two Acts as well as under the Companies Act. It was becoming an expensive practice to register such securities under the three Acts, though the better opinion was that registration under the Companies Act only was essential. The Act of 1903 makes plain that registration of such securities need be only under the Companies Act, 1896, and it further provides for a certificate being given upon such registration which is made evidence of all the requirements of the law being complied with.

Life Assurance.—By the Life Assurance Companies Act of 1873, a policy of life insurance was, to the extent of £1,000, protected from seizure in any execution by any creditor, and protected likewise in the event of the insolvency or death of the policy-holder. The Victorian Supreme Court had in the case of *Davey* v. *Pein*, 11 Victorian Law Reports 446, held (though not unanimously) this to mean that the protection against creditors extended to any policy or policies (whatever the amount assured) the surrender or market value of which in the aggregate did not at the time

of the protection arising exceed £1,000. Then the Companies Act, 1900 (Life Assurance Act), protected a policy maturing only at death to an unlimited extent against the creditors of the policy-holder, and altered the previous law to this effect, and in so altering it shut out, in error, policies like endowment policies maturing before death from all such protection, though such latter policies had enjoyed the protection under the earlier law. The Companies Act, 1903, replaces life policies not maturing at death only up to £1,000 in the protected position previously enjoyed by them by enacting (s. 4) that any policy of his life to the extent of £1,000, not maturing only at his death, shall be protected against creditors of the policy-holder, unless his will has expressly provided to the contrary.

Proprietary Companies.—Very stringent clauses were contained in the Companies Act of 1896 as to the formation and management of ordinary trading companies; but the same Act exempted from such provisions the special class of trading company known in Victoria since the year 1896 as "the proprietary company limited," which the said Act created. Such a company is in fact a trading partnership converted into a private company; its shareholders were not to exceed twenty-five in number, and being registered under the Act, the company got for its shareholders the blessing of limited liability instead of the unlimited liability of an ordinary partnership. These companies have proved a great success and are much availed of, but experience has shown that the limit to the number of shareholders was at times not enough when the interests of the various proprietors came to be subdivided, and so this Act of 1903, by s. 5, increases the number of shareholders in such private companies from twenty-five to forty as the maximum number of shareholders therein.

Cremation.—The Cremation Act, 1903 (No. 1876), is in no way compulsory in character in interfering with what is popularly called the right of Christian burial. It merely permits cremation and empowers the trustees of public cemeteries (except the Melbourne general cemetery and one or two others) to establish crematoria for the burning of the human remains of any person who duly expressed a desire to have his body cremated and not buried. No cremation may occur outside a cemetery except by the consent of the Board of Health. The Act makes all necessary amendments in the Cemeteries Act of 1890 for the establishment of crematoria; and it copies some of the provisions of the Imperial Act, 2 Ed. VII., c. 8, as, for example, to the site of crematoria not being nearer to any dwelling-house than two hundred yards, except the consent of the owner, lessee, and occupier of such house, nor within fifty yards of any public highway, nor in any part of a cemetery set apart for any particular religious denomination (s. 6), also as to empowering the trustees of cemeteries to accept donations for crematoria (s. 7), and empowering the Governor in Council to make regulations for the management, maintenance, inspection, and use of the crematoria (s. 12), and for providing for a registry of crematoria (s. 13).

The Act provides for the registration of the crematoria and of the cremation of the persons cremated similar to that required by the law in the case of a person buried (s. 14). It requires too that the person conducting the cremation shall send a certificate thereof to the Government Statist, a register showing the name of the deceased, date and place of cremation, names (if practicable) of relatives of deceased thereat, and the name of the clergyman who officiated at any religious ceremony (s. 16). Before the cremation can take place the Act requires a certificate from a medical practitioner who personally attended the deceased, and showing that the circumstances of the death have been closely investigated by him, and that nothing is present to make any subsequent exhumation of the body necessary, and that he has independently enquired into the possibility of the death having occurred from poison or injury or illegal operation, and that no circumstances exist demanding further enquiry before the body is cremated, and further certifying to the primary and secondary cause of the death of the deceased and that he (the medical practitioner) has no pecuniary interest by the death of the deceased.

Lunacy (No. 1873).—Since the year 1888 no new legislation upon lunacy law has been placed on the statute roll of Victoria, and many needed reforms in administration had become necessary. This Act of 1903 aims mainly at the better administration of the lunacy law. It creates (in Division 1) in lieu of the government by a department of the Public Service a government by a Department of Lunacy effectively controlled by a single responsible officer—the Inspector-General in Lunacy. This office is created for the first time in Victoria, though such an office had been found to be most useful in the State of New South Wales. The real administration of the lunacy laws is now handed over to the Inspector-General, who is a qualified medical practitioner with a salary charged on the Consolidated Revenue of not exceeding £1,500. The officer is made independent of the Public Service Acts, is appointed for five years but eligible for re-election, is made exempt from legal liability for acts done by him in the performance of his office, but is liable to suspension by the Governor in Council, who on suspension must lay before Parliament the grounds for so acting. The control of all officers in the Lunacy Department of the State is by this Act entrusted to the Inspector-General, and the control previously exercised by the Public Service Commissioner is transferred (except as to superintendents) to such officer, and he can punish and recommend dismissal by the Governor in Council without any appeal (ss. 12-14). An annual report to Parliament on the state and condition of the hospitals for the insane, and of receiving and licensed houses, and of the care and condition of the patients therein is required to be made by the Inspector-General (s. 15).

The Act creates licensed houses for the reception of one or more insane persons, and prohibits persons not so licensed from taking charge of insane

persons for profit (ss. 56, 57). The Victorian Act of 1888 had discontinued private licensed houses for the insane. This Act renews them, but under very careful safeguards, for they are now to be under the same supervision as the State hospitals for the insane, and the attendants in such licensed houses are to be approved by the Inspector-General.

This renewal practically gives legal status and sanction to a number of establishments which were existent in evasion of the previous law, and every licensed house containing more than fifty patients must have a resident medical practitioner other than the licensee, whose appointment must be approved by the Inspector-General, and if such house contains over twenty-five patients it must be visited daily by a medical man other than the licensee, whose appointment must be similarly approved. The licensee is made superintendent. A licence may be revoked on the recommendation of the Inspector-General. Further, the Act (in Division 3) creates "receiving houses" (s. 40). In the State of New South Wales, receiving houses have for many years done most excellent work, and this Act adopts them for Victoria as a place for the reception of those patients about whose mental condition there may be some doubt in the minds of magistrates or doctors. The hospitals for the insane were previously put to a double purpose—as an asylum proper and also as a receiving house; but this Act makes provision in future for two different classes of institution. No person may be detained in a receiving house for more than two months. If the patient proves to be insane, the superintendent may order his transfer to some hospital for the insane; and if, on the other hand, the patient proves to be not insane, he is to be discharged. Persons who may be dealt with as of the criminal insane are not to be sent to or received in any receiving house (s. 42). If the committee of any public hospital provide a ward as a receiving ward for the reception of persons presumably insane, and for the temporary reception of insane persons, the Governor in Council may proclaim them as such (s. 49), and the provisions of the principal Act regarding maintenance orders shall then apply to all persons received into such wards.

In Division 4 the law is continued as to cottages or other separate accommodation for paying patients. When proper sufficient arrangements have been made by the Master in Lunacy in regard to the paying patient, a certificate by such Master in Lunacy entitles the patient to separate accommodation, which is provided in any cottage or other place of separate accommodation in hospitals for the insane for such class of patients, and except for such separate accommodation the paying patient is placed on the same footing as ordinary patients in regard to examinations, inspection, control, etc.

The Act adopts for Victoria the provisions of the Imperial Lunacy Act of 1890 as to mechanical restraint—that there is to be no mechanical restraint except by order of the superintendent or medical officer of the hospital, and that where it is in fact applied, the grounds for its application shall

be duly certified and a record of the case be kept from day to day. The Victorian Act adds what is lacking in the English provisions, viz. that patients may not be "secluded" except under the like authority and circumstances (s. 73). The pre-existing law as to the annual examination of patients is modified, and all patients in hospitals for the insane or in licensed houses or whilst boarded out are to be examined once at least in every twelve months during the first three years; subsequently every five years (ss. 88-90).

The pre-existing law as to the boarding-out of harmless patients is continued and further regulated by this Act (ss. 97-9). The inspection of patients and hospitals for the insane by official visitors appointed by the Governor in Council for the purpose is continued and further regulated by this Act, and the duties of such visitors and the books and documents to be produced to them and the reports to be made by them are fully detailed (ss. 74-85). Provision is also made for female nurses attending male patients who are certified by the superintendent to be of cleanly and unobjectionable habits (s. 17); for the appointment of a pathologist for Melbourne to make autopsies on patients dying, and also such pathological examinations (bacteriological, chemical, and microscopical) as opportunity may afford, and report quarterly thereon to the Inspector-General (s. 87); for the examination by a Court visitor at any hospital of any patient ordered to be examined by any judge of the Supreme Court, and so save trouble and give less publicity to the condition of the patient than if made at Court (s. 86); for the removal of patients from the State of Victoria to his friends outside such State by an order of the Supreme Court in cases where the friends are willing to undertake the care and charge of the patient; and for the transfer and trial leave of patients.

Railways (No. 1861).—Railways are State-owned in Victoria, and in recent years legislation has somewhat modified the common law right of action of a passenger for negligence in carrying him. For some years the maximum compensation recoverable in such an action has been fixed at £2,000 (the Railway Act of 1891), and to limit the costs the County Court is made the Court to try the action, except when a Supreme Court judge otherwise orders (the Railway Act of 1896). The present Act—the Railway Passengers' Action Act, 1903—is designed to further save costs of litigation in those cases where the only question at issue is the amount of damages. It enacts that the Railway Commissioners may within ten days of the service of process notify the plaintiff that liability is admitted and the amount of damage only is disputed (s. 2). This notification stays the action; and thereupon the plaintiff, or, in case he is physically unfit, some one in his behalf, must make a declaration setting forth the plaintiff's occupation and income for three years preceding the action; the nature of the injury, and whether permanent or not, with the grounds for believing it permanent; the amount claimed for the injury itself; the names of and

the fees charged by the plaintiff's medical advisers, and the amount and nature of any other claims arising out of the injury (s. 3). The medical advisers to the plaintiff are also required to render for the purpose of such declaration a detailed and full statement of all services, operations, and fees (s. 4). Thereafter the defendant may in writing offer a sum in settlement, and if the plaintiff accept it judgment for that amount with costs may be forthwith entered up. If, on the other hand, the plaintiff refuses the offer, the action is fought out, and no communication may be made to the jury of the offer made, and unless the plaintiff recovers more than the amount offered he pays the costs of the action. But if he does recover more than the amount offered the defendant pays the costs.

Roads.—The Unused Roads and Water Frontages Act, 1903 (No. 1894), establishes a duty upon the occupier of unfenced land adjoining a public unused road or water frontage either to fence off his land from such road or frontage and keep the fence in repair or to apply for a licence and pay a fee therefor to occupy and use the whole or one-half of such road or frontage according as the other side of such road or frontage is fenced or not; and this duty is enforced by a penalty of £1 per day for every day the licence fee is unpaid or the fence not constructed or kept in repair (ss. 6-9). The licence is for three years, and is renewable, but it may be determined by three months' notice in writing being given by the Governor in Council.

6. WESTERN AUSTRALIA.

[*Contributed by* Robert W. Lee, Esq.]

Acts passed—15.

Supply.—Nos. 1 and 3.

Co-operative and Provident Societies (No. 2).—This provides for the incorporation and regulation of co-operative and provident societies.—*Registration.* SS. 3-4: A society for carrying on any lawful business other than banking may be registered; but no member shall have or claim any interest in the shares of the society exceeding £200. No society shall be registered which does not consist of seven persons at least. S. 6: Appeal to the Supreme Court from Registrar's refusal to register.—*Cancellation and Suspension of Registry.* S. 8: The Registrar may after notice in certain cases suspend, and with the approval of the Minister cancel, the registry of a society. There is an appeal to the Supreme Court.—*Rules.* S. 9: The rules of a registered society must contain provisions in respect of the matters mentioned in the first schedule to the Act.—*Duties and Obligations.* SS. 10-14 provide for a registered office, annual audit, etc.—*Privileges.* S. 15. Upon registration a society becomes a body corporate with limited liability. S. 18: A member may nominate any person to whom shall pass upon his

decease his property in the society (or part of it) not then exceeding £50. Such nomination shall be made in writing and entered in a book kept for the purpose. It may be varied or revoked in like manner, but not by will or codicil.—*Property and Funds.* S. 27: A society may invest its capital as provided by the rules, or in certain specified securities, may hold land, (s. 28) and make advances to members (s. 29).—*Disputes.* S. 35: Disputes are decided as provided by the rules or, by consent of the parties (unless the rules expressly forbid it), by the Registrar with the consent of the Minister. Except for the enforcement of an award, or to have a case stated on matter of law, there is no recourse to the Courts, unless the rules provide this or no other method of settlement of disputes.

Other provisions relate to *Inspection* (ss. 37-8), *Change of Name, Amalgamation, Conversion* of a registered society into a company and *vice versa, Dissolution* (ss. 46-8), *Offences, Penalties, and Legal Proceedings* (s. 49, etc.).

Railways (No. 4).—The Trans-Australian Railway Enabling Act enables the Parliament of the Commonwealth, in pursuance of s. 51 (xxxiv) of the Constitution, to make laws for the construction and maintenance of a railway from Kalgoorlie to the eastern boundary of Western Australia, and of another railway to run due north from the Port of Eucla to the point of intersection. The State Government on its part undertakes the construction of a railway of like gauge, etc., from Kalgoorlie to Fremantle.

Bread (No. 5).—This Act amends the law relating to the making and sale of bread and (*inter alia*) prohibits Sunday baking before 5 p.m.

Dogs (No. 6).—This Act repeals the Dog Act, 1883. S. 5: Every person keeping a dog is to have it registered annually, and (ss. 8-9) he thereupon receives a receipt and label. S. 14: Changes of ownership must be registered, but without fee. S. 19: Stray dogs may be seized and destroyed or sold. S. 29: The owner is liable in damages for injury done by his dog without proof of *scienter* or of negligence. S. 29: Adult male aboriginal natives may have one unregistered male dog each. The registration fee is 7*s.* 6*d.* for every dog, 10*s.* for every bitch.

Shipping (No. 7).—This applies Part II. of the Merchant Shipping Act, 1894, to all British ships registered at, trading with, or being at any port in Western Australia.

Companies (No. 9).—This continues in force the Companies' Duty Act, 1899, for the recovery of duties due and payable and penalties incurred thereunder.

Judicature (No. 10).—This amends the Supreme Court Act, 1880, so as to remove doubts as to the Governor's power under s. 12 of that Act to assign by general or special commission appellate as well as original jurisdiction to persons appointed Commissioners of the Supreme Court.

Parliament (No. 11).—This provides for the election of senators for Western Australia to the Senate of the Commonwealth. S. 9 is of a novel

character: "In all cases where it is impracticable to communicate any writ, proclamation, or notice by post without occasioning undue delay, any telegraphic advice communicated in the ordinary course shall suffice."

Probate and Administration (No. 13).—This is an Act to consolidate and amend the law relating to probate and administration and the duties on the estates of deceased persons, and for other purposes. It extends to 138 sections and is divided into parts as follows: i. Preliminary. ii. Probate and Administration. iii. Foreign Probates and Administration. iv. Curator of Intestate Estates. v. Caveats. vi. Duties on Deceased Persons Estates, and Succession Duties. vii. Miscellaneous.

The estate duty rises from 1 per cent. on estates not exceeding £1,000 in value to 10 per cent. where the value exceeds £50,000.

Prisons (No. 14).—The Prisons Act, 1903, in seventy-nine sections consolidates and amends the law relating to prisons.

Lunacy (No. 15).—This is an Act of 190 sections. Part IV. relates to habitual drunkards, and empowers the Court to make an order for compulsory detention in any hospital for the insane (but in a ward or division in which lunatics are not detained), or in a licensed house, for a period not exceeding twelve months. Application may be made either by the habitual drunkard himself, or by parent, husband, wife, child, or friend.

Miscellaneous Acts:

Poisons.—No. 8 amends the Pharmacy and Poisons Act, 1894.

Tramways.—No. 12 amends the Tramways Act, 1885.

7. BRITISH NEW GUINEA.[1]

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—5.

Appropriation.—Ordinance No. 1 is an Appropriation Ordinance.

Customs.—Ordinances Nos. 3 and 4 amend former Customs Ordinances of 1889 and 1902 by altering the duties on tobacco (No. 4), and on benzine and naphtha (No. 3).

Land Registry.—Ordinance No. 5 provides for the appointment of a Registrar of Titles and for transfer to him of the duties of the Registrar-General under the Real Property Ordinance of 1889 and the Land Ordinance of 1899.[2]

Timber Cutting.—Ordinance No. 2 regulates the cutting of indigenous timber and amends the Indigenous Timber Ordinance of 1892.

[1] The Commonwealth of Australia had not up to the end of 1903 legislated for British New Guinea under chap. vi. of the Commonwealth Constitution Act, 1900 (63 & 64 Vict., c. 12).

[2] See Journal N.S., vol. ii. p. 580.

8. FIJI.

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—17.

Appropriation.—Ordinances Nos. 1 and 8 are Appropriation Ordinances.

Revised Ordinances.—Ordinance No. 13 makes provision for the preparation and publication of a new and revised edition of the Ordinances of the Colony. Very large powers as to consolidation and formal amendment are entrusted to the Commissioner selected, and the new edition, when approved by the Legislative Council, is to be the sole and only proper ordinance-book of the Colony.

Bills of Exchange.—Ordinance No. 6 amends the Bills of Exchange Ordinance, 1891 (No. 3, which is in the main a transcript of the Imperial Bills of Exchange Act, 1882[1]), by altering the definition of "reasonable time" for notice of dishonour, so as to make it correspond exactly with that in s. 49 (12) of the Imperial Act.

Copyright.—Ordinance No. 5 provides for the protection of copyright and the prevention of piracy. It applies to books and dramatic pieces, as defined in the Imperial Copyright Act, 1842,[2] and to drawings, paintings, engravings, designs, and photographs (including the negative). Registration in the United Kingdom or a British possession gives copyright in Fiji (s. 8). S. 9 applies the provisions of 5 & 6 Vict., c. 45, as to registration, and s. 16 provides that the Ordinance shall be considered as incorporating the International Copyright Act, 1844.[3]

Marriages.—Three Ordinances deal with the subject of marriage.

1. Ordinance No. 3 amends the Indian Marriage Ordinance of 1892 (No. 3)

(1) by altering the definition of "immigrant," which now means "any person of Indian parentage introduced or coming into this Colony whether directly or indirectly and whether wholly or in part at the expense of the Immigration Fund or otherwise," and includes "any descendant of such a person";

(2) by striking out a section dealing with the marriages of Christian immigrants from India;

(3) by making provision for entry in the Indian marriage register of particulars as to immigrants not introduced under an Immigration Ordinance.

2. Ordinance No. 4 amends the Marriage Ordinance of 1892 (No. 10) by excluding from it

(1) "native Fijians *inter se*, marriage between whom is provided for by native regulation";

[1] 45 & 46 Vict., c. 61. [2] 5 & 6 Vict., c. 45. [3] 7 & 8 Vict., c. 12 (Imperial.)

(2) persons of Indian parentage whose marriage is otherwise provided for by the laws of the Colony;

and by prohibiting the celebration of marriage between persons of Indian parentage by a minister registered for marriages unless he has received from the Agent-General of Immigration a certificate under s. 6 of the Indian Marriage Ordinance, 1892.

3. Another Ordinance (No. 10) as to marriages under the Imperial Foreign Marriage Act, 1892, was not sanctioned and has been repealed, and other provision made, by Ordinance No. 4 of 1904.

Customs.—Ordinance No. 7 amends the Customs Duties Ordinance, 1898,[1] by reducing the duty on sugar from $\frac{1}{2}d.$ to $\frac{1}{4}d.$ per lb., and by adding considerably to the list of exempted articles.

Punishments.—1. *Flogging.* Ordinance No. 2[2] regulates the law as to sentences of flogging. It forbids the flogging of females, and limits the maximum in the case of males to twenty-four strokes for adults and twelve strokes for juveniles. This maximum applies not only to convictions on trial, but also to breaches of prison regulations: and when the same person is convicted at one trial of two or more offences punishable by flogging, the combined sentences of flogging may not together exceed the maximum above stated. The instrument to be used must be one approved by the Governor.

2. *Hard Labour.*—Ordinance No. 9 directs that wherever a Court may sentence to imprisonment it may at its discretion order the imprisonment to be with or without hard labour.

Wireless Telegraphy.—Ordinance No. 11 makes the use of wireless telegraphy in the Colony subject to licence from the Governor.[3]

Native Regulations, etc.—Ordinance No. 12 provides for the summary punishment of persons aiding and abetting natives in breach of "native regulations" made under ss. 8 and 9 of an Ordinance of 1876 (No. 35), or by the Governor in Council under ss. 9 and 10 of the Native Taxes Ordinance of 1890 (No. 7), and repeals certain penalties and certain powers of the Governor in Council as to making regulations under the Native Dealings Ordinance of 1891 (No. 4).

Harbours.—Ordinance No. 14 appears to take away the exemption from light and shipping dues given to mail steamers by the Harbour Ordinance of 1880 (No. 2).

Medical Practitioners.—Ordinance No. 15 amends the Medical Practitioners, etc., Ordinance, 1881 (No. 14), by adding to the persons entitled to be registered persons holding a qualification entitling them to practise as dentists or surgeon-dentists in New South Wales, New Zealand, Western

[1] Journal, N.S., vol. i. p. 517.

[2] This Ordinance modifies that of 1902 (No. 4), referred to in Journal, N.S., 1903, p. 373.

[3] Cf. the Imperial Act of 1904 (4 Ed. VII. c. 24).

Australia, or any Colony, country, or State which the Governor in Council may from time to time order to be added to the schedule to the amending Ordinance.

Muncipal Borrowing.—Ordinance No. 16 empowers town boards,[1] subject to the sanction of the Governor, to borrow by debentures secured on the town rates. A sinking fund must be provided. The sum raised must not exceed an amount the interest and sinking fund charge on which shall equal one-fourth the town rates, and the money must be raised for or towards or incidental to permanent improvements.

Summary Convictions: Appeals.—Ordinance No. 17 repeals the Appeals Ordinance, 1899,[2] and substitutes new provisions. The principal changes seem to be that the appeals are to be by motion or special case and not by petition, and that the appellate Court may not consider any evidence not contained in the documents filed for the purposes of the appeal.

9. NEW ZEALAND.

[*Contributed by* GODFREY R. BENSON, ESQ.]

Acts passed—Public, 96; Local and Personal, 42;
Private, deemed to be Public, 2.

Supply.—Nos. 1, 3, 8, 17, and 34 are Supply Acts.

Weights and Measures (No. 5).—This Act, besides consolidating the existing law as to standards of weights, etc., inspection of weights and measures, and penalties for false weights and measures, authorises the introduction by proclamation of the decimal standard and makes it unlawful thereafter to use any other standard. It also empowers the Governor from time to time to proclaim standards for electricity, temperature, pressure, and gravity.

First Offenders' Probation Amendment (No. 6).—An Act of 1886 empowers Courts to sentence first offenders to a period of supervision by a "Probation Officer," instead of imprisonment, but with a liability to imprisonment if their conduct is unsatisfactory. The chief amendment made by this Act is to make it the duty of the Probation Officer to enquire, when required, as to the character of a first offender before the original sentence is decided.

Inebriates' Institutions (No. 7).—This Act provides that any of the existing institutions for inebriates may be reserved by the Governor for the reception of such inebriates as are certified by medical authority to be curable.

Supreme Court Judges (No. 9).—Under this Act future judges must

[1] Incorporated under the Towns Ordinance Act, 1883 (No. 16).
[2] Journal, N.S., vol. ii. p. 583.

retire at seventy-two and present judges may retire with a pension at that age.

Wireless Telegraphy (No. 11).—Under this Act the Governor may establish stations for wireless telegraphy, and no private person may do so without his leave.

Inspection of Machinery Act Amendment (No. 12).

Dairies (No. 13).—This Act, besides extending the time within which loans for dairies may be granted, provides for the prevention of pollution of rivers by dairies.

Local Government (No. 15).—This Act (*inter alia*) raises the limits of certain rates, provides for construction of tramways when the principal Act is not in force, authorises the provision of fire brigades out of the county fund, empowers county councils to license and control public billiard-rooms other than those at hotels, and enacts a closing hour for such billiard-rooms.

Dramatic Copyright (No. 16).—This Act provides penalties, in addition to damages in a civil action, for infringements of dramatic copyright.

Legitimation (No. 19).—By an Act of 1894 legitimation by subsequent marriage was introduced. There is in it an exception for the case when at the time of the birth of the child there was a lawful impediment to the marriage of the parents. This Act takes the case of a deceased wife's sister or a deceased husband's brother out of the category of such lawful impediments.

Commissioners (No. 20).—This Act provides certain powers and immunities for all commissioners appointed by the Governor to enquire into matters of administration or legislation or suggested legislation or the conduct of any public officer. Such commissioners are given all the powers of a court of law in relation to obtaining evidence. Witnesses and counsel before them are put in the position of witnesses and counsel in a court of law; and the commissioners are given the power of awarding costs against any party to an enquiry in accordance with a scale to be drawn up by two judges.

Death Duties (No. 21).—This Act provides that, when the effect of a will is altered by an order of the Court under the principal Act of 1900, the death duties payable shall be such as would have been payable if the provision made by the Court had been made by the will.

Intestates' Estates (No. 22).—By this Act, when an intestate man leaves a widow but no children, or an intestate woman leaves a widower but no children, the widow or widower is entitled to £500 out of the estate (or the whole net estate if it be less than £500) and, in addition, to such share in the residence as she or he was under the previous law entitled to in the whole estate. (This share is the same in the case of a widow and of a widower.)

Public Library (No. 23).—Under this Act a copy of every book published in the Colony is to be given to the General Assembly Library.

Police (No. 24).—This Act deals with billiard-rooms, prohibits the unauthorised use of words denoting Government patronage, requires notice to the public of the use of any poison for destroying weeds near a road, penalises the removal of materials from a foreshore, and prohibits unauthorised placing of advertisements, etc., upon land belonging to the Crown or to any local authority.

Bush and Swamp Crown Lands (No. 25).—The Governor is authorised by this Act to grant remissions of rent and exemptions from local rates for a few years to selectors of bush, swamp, or scrub land.

Water-power (No. 26).—"Subject to any rights lawfully held, the sole right to use water in lakes, falls, rivers, or streams for generating or storing electricity or other power shall vest in His Majesty." The Governor may delegate powers in regard to local authorities, and private persons may obtain leave to use water-power for electric lighting or for driving machinery not used for generating electricity.

Sand-drift (No. 28).—This Act is to come into force in any district if proclaimed by the Governor upon petition from a local authority or private persons. When it is in force, the Minister of Lands may form a scheme directing measures for keeping back sand-drifts, and apportioning the cost among the landowners affected. The operation of such a scheme may be delegated to a local authority. To ensure fair apportionment of cost an appeal to the stipendiary magistrate to vary the scheme is allowed.

Military Pensions (No. 31).—This Act somewhat extends the power of granting pensions and allowances to persons who suffered from wounds or illness during service in South Africa.

Sea Fisheries (No. 32).—This Act imposes a penalty for the wilful destruction of fresh fish. It also extends to all boats used for taking fish or oysters for sale the requirement of a licence previously imposed on some of them, makes further provision for the supervision of oyster fisheries, and allows the Governor to establish experimental oyster-farms and to appoint boards of management for fish hatcheries.

Native Townships (No. 33).—This Act provides for alteration of the plan of any native township under the Native Township Act, 1895.

Products Export (No. 35).—This Act provides for the inspection of grain, hops, hemp, fruit-pulp, apples, pears, and poultry intended to be exported, and for the certifying of their quality and condition. No such produce may be exported (unless to countries which may be specially excepted from the Act by the Governor) without a stamp, mark, or certificate in writing showing its quality and condition. The Act also amends the existing provisions of a like nature in regard to the export of meat. It repeals, however, the Flax Grading and Export Act, 1901.

Land and Income Assessment (No. 37)—The chief amendments (to the Act of 1900) made by this are in the graduation of the tax on the unimproved value of land. There are now no less than forty-nine steps in the graduation;

land of which the unimproved value is under £5,000 paying the rate of "ordinary land tax" fixed by the annual Land Tax and Income Tax Act, viz. at present 1*d.* in the pound (see No. 38), while land of which value is as much as £5,000 but under £7,000 pays $\frac{1}{16}$*d.* in the pound extra, and land of the value of £210,000 or over pays 3*d.* in the pound extra. Under the new scale the tax on landed estates worth less than £25,000 is lower, and that on larger estates is higher than under the old scale.

Land Tax and Income Tax (No. 38).—The rates of tax are the same as last year. The rates of ordinary land tax are 1*d.* in the pound (on the unimproved value) for land, and $\frac{3}{4}$*d.* in the pound for mortgages on land. The rates of income tax are for companies and for individuals with incomes exceeding £1,000 1*s.* in the pound, for individuals with incomes under £1,000 6*d.* in the pound.

Municipal Corporations (No. 41).—This Act (*inter alia*) empowers local authorities to control or prohibit advertisements on premises adjoining public streets; also to regulate certain matters in respect to traffic on roads, *e.g.* to prescribe the number of horses that shall be required to drag a load of given weight, also to construct along any street tracks for the use of cyclists only.

Labour (No. 45).—This Act creates a Department of Labour under the direction of the existing Minister of Labour. The chief functions with which it will be charged will apparently at present be the collection of information for an annual report upon the condition of labour.

Gold Duties (No. 47).—By this Act gold duties may to the extent of one-half be apportioned by the Governor among the local authorities interested in the gold fields.

New Zealand Institute (No. 48).—This Act alters the constitution of an existing New Zealand Institute (*sc.* for the advancement of science) by connecting it more closely with the local institutes for the same purpose in different parts of the Colony.

State Fire Insurance (No. 49).—The Government is empowered by this Act to set up a fire insurance office with a borrowed capital of £100,000. Half the profits are to be distributed every three years in bonuses to actual insurers—the claim to a bonus is apparently not to be lost or diminished through insurer's having received compensation for loss by fire. The balance of the profits will be carried first to a sinking fund for redemption of debt and afterwards to a reserve fund.

Australian and New Zealand Defence (No. 50).—This Act carries out so far as concerns New Zealand the agreement made between the Admiralty and the Governments of Australia and New Zealand as to the minimum strength of the naval force to be kept on the Australian Station and the Colonial contribution to be made to its cost.

Fisheries Conservation (No. 51).—This Act empowers the Governor to make regulations for the licensing of trout and perch fishing and for the prevention of pollution of trout and salmon rivers.

Fisheries Encouragement (No. 52).—This is an annual Act continuing for a year the bonus on canned and cured fish for export.

Companies (No. 53).—This is mainly a consolidating Act.

Scenery Preservation (No. 54).—This Act provides for the reservation of public lands and the compulsory purchase of private lands which a Commission (to be appointed) recommends should be kept or acquired by the Colony for its "scenic or historic interest," or because there are thermal springs upon it.

Patriotic Funds (No. 58).—Various funds having been raised by subscription for the benefit of the members of the contingents sent to South Africa, this Act provides for the disposal of the unexpended balances.

Industrial Conciliation and Arbitration (No. 62).—This Act imposes penalties upon employers, workers, or combinations of either taking "proceedings with the intention to defeat the provisions of" any award under the principal Act, also upon employers dismissing men merely because they are members of unions or entitled to the benefit of any award. It also makes it the duty of factory inspectors to see that the provisions of awards are carried out.

Life Assurance (No. 63).—This Act allows a minor of fifteen to assure his life. The insurer is to be presumed to be fifteen until it is proved that the receiving company (or the person taking over the policy) knew that he was less. The Act further provides that when a policy-holder dies leaving a will, the policy moneys shall not be applied in payment of his debts or legacies unless the will expressly so directs.

Imprisonment for Debt (No. 64).—Before this Act committal to prison for non-payment of a judgment debt was restricted to certain cases, of which the chief were fraud and proof against or admission by the debtor that he had been able to pay without depriving himself or his family of reasonable maintenance. This Act throws upon the debtor the burden of proving that he has not been able to pay without, etc.

Legal Practitioners (No. 65).—This Act admits to practice in New Zealand, without further examination, barristers or solicitors who have practised for three years in the United Kingdom. It further authorises the Governor to order the admission to practice of barristers or solicitors from any part of the Empire in which due securities are taken for their competency, and in which the like privileges are given to New Zealand.

Orchard and Garden Pests (No. 67).—This Act gives drastic powers to the Governor for the extirpation of certain pests affecting orchards and gardens.

Maoris (No. 68).—The principal provisions of this Act relate to the delegation by Maori Councils of part of their functions to village committees of Maori, penalties on the introduction of drink into Maori villages, the registration of Maori dogs, the regulation of kauri-gum fields, and the protection of Maori burial-places.

Railway Servant (No. 69).—In computing the deductions to be made for superannuation from a man's pay, what he receives for overtime is not to be reckoned in his pay.

Agricultural and Pastoral Societies (No. 70).—This Act empowers the societies in question to raise money on mortgage for building and improvements and the purchase of further land.

Kauri-Gum Industry (No. 71).—This Act makes it possible to grant mining leases on kauri-gum reserves, provided that adequate measures are taken for the protection of the kauri-gum industry.

Secondary Schools (No. 73).—This Act (*inter alia*) requires that every pupil admitted to a secondary school shall have obtained a certificate of competency in the subjects of a certain standard in the elementary schools; requires every endowed secondary school to spend a certain proportion of its income in scholarships or offer a certain number of free places; gives a grant to every secondary school (endowed or otherwise) which provides free places; gives the Minister of Education further powers for the establishment of secondary schools; and requires that every private secondary school shall be open to inspection. A subsidy is also given to meet every voluntary bequest or contribution for the support of any secondary school.

Statutes Compilation (No. 75).—An Act of the previous year created special facilities for the preparation and passing of consolidating bills. This Act provides that such bills may include minor amendments of the Acts to be consolidated, such as are requisite for the purpose of giving effect to implied repeals, securing uniformity of expression, etc. Special attention must here, however, be drawn to such proposed amendments and they will be liable to amendment in Committee.

Preferential and Reciprocal Trade (No. 78).—This Act imposes an additional duty on certain imports, previously liable to duty, when they are not the produce or manufacture of any part of the British dominions. These articles include: basket-work, bicycles, etc., boots, candles, carts and carriages, cement, china, cloth, cordage, earthenware, furniture, fish, fire-arms, glass, hardware, hops, nails, iron pipes, lamps, paper, plate, pumps, and a few other things. In the case of cement the additional duty equals the duty in force under the general tariff for the time being; in the other cases it equals half that duty. The Act also imposes an *ad valorem* duty of 20 per cent. on certain articles, not being the manufacture of any part of the British dominions, which was previously free of duty, and of which rails and sheets, rods, bolts, bars and plates of iron are the chief.

Public Domains (No. 79).—The principal provisions of this Act are for the prevention of building and the preservation of natural bush on domains or reserves set apart for public recreation, and for enabling local authorities to contribute to the management or improvement of any part of the lands under the Domain Board, though such lands may be outside their own localities.

Coal Mines (No. 80).—This Act provides that every miner shall be entitled to overtime pay for employment exceeding eight hours (bank to bank) in a day. It provides that miners' associations may establish medical clubs, and that thereafter mineowners shall be bound to deduct the required contributions from the wages of their men and pay them over to the medical clubs. It enacts that the bed of any navigable river (with the minerals under it) shall, except when it has been granted by the Crown, be deemed to have always been vested in the Crown. It provides that every accident in a mine shall be *primâ facie* evidence of negligence on the part of the owner. It proceeds to make provisions in regard to compensation for injury or death arising from the non-observance in any mine of any of the provisions "of this Act." This perhaps means "of the principal Act" of which this Act is to form part, for no bodily injury could apparently arise from non-observance of the new provisions of this Act. But as the provisions of the principal Act are elsewhere described as such, the question is puzzling. The compensation may be recovered by way of damages for a tort committed by the owner, in any case in which the injury or death was not solely due to the negligence of the sufferer.

Mining (No. 81).—This Act applies to mines other than coal mines the same provisions as to compensation for injury or death as are contained in the last named Act. But the meaning is obscure, inasmuch as it is not provided that this Act shall form part of and be read with the principal Act.

Public Health (No. 82).—This Act (*inter alia*) gives district health officers powers to pull down insanitary buildings and execute other sanitary works when the local authority fails to do so; it also empowers them, by condemning a building as unfit for human occupation, to make it unlawful for anybody to remain in occupation of it after twenty-one days, and imposes a penalty of £10 a day upon every person continuing longer to occupy it. It transfers the duty of providing infectious diseases hospitals from local authorities to Hospital Boards. It also requires the licensing and inspection of all private hospitals.

National Scholarships (No. 84).—This Act provides in each education district a number of scholarships, varying with the population, to be given upon examination in the elementary school subjects and to be tenable in secondary schools, and in each university district scholarships tenable in the university.

Mutual Fire Insurance (No. 86).—This is an Act to facilitate the formation of mutual fire insurance associations by owners of farms or isolated property.

Juvenile Smoking Suppression (No. 87).—This Act imposes penalties upon any one who sells cigarettes, cigars, or tobacco to a person under the age of fifteen and upon any person under that age who smokes.

Workers' Compensation for Accidents (No. 88).—By this Act when a

contract to perform work in a mine is let to contractors who do not employ "wages-men" or who actually perform any part of the work themselves they are to be deemed to be workers: claims under £200 may be heard by stipendiary magistrates; illegitimate children are placed among the relatives who have a claim to compensation in case of death.

Stock (No. 91).—The Governor is hereby empowered to prevent the introduction into the Colony of any substance which he thinks may introduce cattle diseases; and pest regulations made under the Stock Act, 1893, restricting the importation of bones, bone dust, and other animal manures are validated.

Public Works (No. 93).—An owner selling land which does not front on a road must by this Act dedicate a public road giving access to it. The Act also provides (*inter alia*) for the regulation of heavy traffic, the removal of obstacles from river beds, and the taking of land for camping grounds, rifle ranges, etc., and for forest plantations and recreation grounds and for the preservation of scenery in the same manner as it could previously be taken for public works.

Coastwise Trade (No. 95).—By this Act the Governor may prohibit or restrict coastwise trading or trading between New Zealand and other British territory by the ships of any country which itself prohibits or restricts coastwise trading by British ships.

Shipping and Seamen (No. 96).—This is a consolidating Act with some amendments. The most interesting provision in it is one which empowers the Courts to rescind, when they see fit, any contract between a seaman and his employer.

V. SOUTH AFRICA.

1. CAPE COLONY.

[*Contributed by the Attorney-General of the Colony.*]

Acts passed—35.

The legislation has been varied and important.

Finance.—Nos. 1, 2, 17, 26, 29, 31, and 32 are financial measures for the furtherance, among other things, of railway development in the Colony, harbours, and irrigation.

Parliamentary Representation (No. 5).—Among the Public General Acts of the Session the most important—as affecting the Constitution—is No. 5, which provides for additional representation in Parliament. This Act partly relieves certain electorates from the hardship of under-representation. The

Western, South-Eastern, and Eastern Electoral Provinces are each given one additional member in the Upper House. The electorates of East London, George, King William's Town, Paarl, Oudtshoorn, Port Elizabeth, Queenstown, Uitenhage, Woodstock, and Wynberg are each empowered to return one additional representative to the Legislative Assembly; and the City of Cape Town has conferred on it the privilege of returning two additional members.

The Act requires the elections to be held as soon as may be after its promulgation. It increases, it will be observed, the number of members of the Legislative Council by three, and that of the Lower House by twelve.

Treason Sentence Commutation and Judicature.—No. 35 is perhaps next in importance, and is one that should go far towards the removal and obliteration of grievances connected with the late war and rebellion. All sentences for treason are commuted to five years' disfranchisement, from the date of conviction, irrespectively of the "class" in which the accused was convicted; and all persons at the date of the Act unconvicted are to be tried by resident magistrates, and subjected to no further penalty than five years' disfranchisement.

It will be observed that this clemency is not extended to those who were guilty of offences against the usages of civilised warfare; and those remaining unpunished will be prosecuted under the common law in the ordinary criminal tribunals, the special Treason Courts and Commissions being abolished (ss. 6 and 7).

For the purposes of expediting the administration of justice, the Act confers on a single judge of the Supreme Court the full original jurisdiction which theretofore was alone exercisable by a quorum of two judges. The effect of this enactment is to establish divisions of the Supreme Court, the Eastern Districts Court, and the High Court of Griqualand. It confers right of appeal to the Supreme Court sitting as a Court of Appeal. Sub-s. 3 of s. 2 slightly alters the constitution of the latter Court. S. 8 extends the right of trial by jury and in the ordinary criminal tribunals to persons charged with offences against the Diamond Trade Laws, and at the same time abolishes the special Courts at the Diamond Fields constituted by the repealed laws.

With a view to relieving jurors from the onerous duties and prolonged attendances theretofore imposed on them, s. 4 of the Act empowers the Attorney-General to cause twenty-seven additional jurors to be summoned to attend the criminal sittings of the Supreme Courts throughout the Colony. S. 5 empowers suitors against the Crown in its Colonial Government to sue in the superior or inferior Courts within the jurisdiction of which the cause of action may be situate or may arise; and those claiming against the Railway Department may sue in any district through which the railway passes. It will be noted that the section does not increase the jurisdiction

of inferior Courts as regards the subject-matter of the suit, but merely confers jurisdiction in suits against the Crown, and claim being otherwise within the jurisdiction.

S. 3 scarcely falls within the title of the Act—it removes a disability attaching to the holders of the higher judicial offices, in authorising the judges to receive remuneration for special services performed under Act of Parliament.

S. 9 divests the Chief and Assistant Chief Magistrates of the Native Territories of their judicial functions in criminal appeals and reviews; and their jurisdiction is transferred to the superior Courts of the Colony.

War Compensation Awards (No. 30).—An Act inspired by a desire to remove grievances resulting from the war and rebellion is Act No. 30, which provides for the appointment of a Commission to enquire into awards made by Colonial War Losses Compensation Commissioners, with a view to reporting on their adequacy, and to enquire into claims which have been disallowed, or not finally dealt with, or which were forwarded but were mislaid or lost, or which were never submitted. It empowers the Governor to appoint five Commissioners—one to be a judge—and to give instructions and make regulations for the purposes of enquiry.

Revenue: Beer and Spirits (No. 36).—The most important Act of the Session from a revenue point of view is No. 36, which imposes an excise on beer and spirits and—for the first time in this Colony—an income tax.

The first part, intituled "Excise," is of a complicated nature, re-enacting, with amendments, certain Acts imposing an excise on beer, and repealing and amending a number of other statutes.

The Act imposes such an excise and increases the duty already existing on spirits distilled from materials other than wines, grapes, and raisins from 4*s.* to 10*s.* per gallon.

The duty on beer is imposed by re-enacting, with amendments, the Acts No. 11 of 1884 and No. 27 of 1885. Under the former—as now amended—the duty payable is 9*s.* upon every thirty-six gallons of worts of a specific quantity of 1057°, every two bushels of malt used being deemed to produce thirty-six gallons of worts.

The most vital enactment in this Part—the passing of which is remarkable as disclosing a welcome co-operation between the opposing parties in the Legislature—is that providing for the payment of a duty of 6*s.* on every gallon of proof colonial spirits distilled from wine (including grapes and raisins, husks, etc.) with a proportionate increase or decrease in case the spirits be of a greater or less strength. The duty is payable by the vendor on sale to the consumer (that is to say, to any person other than a licensed dealer or a retailer) and not necessarily by the distiller. This is a feature peculiar to our law—as compared with the Imperial and colonial statutes—the object being to make the duty appear as falling rather on the consumer than on the farmer.

The Act contains elaborate provisions in order to secure the payment of the duty; and the Governor is empowered to appoint the necessary officers, and to make regulations for their guidance and generally for the purposes of the statute (s. 32).

The exemptions from the excise are in respect of spirits consigned or removed for consumption abroad, spirits used for the necessary fortification of wine, and—to the extent of thirty gallons per annum—intended to be appropriated to the private use of the producer.

Another provision peculiar to this Law is that contained in s. 40, requiring the Government to open bonded warehouses, in the several wine-producing districts, for the storage of spirits, and to advance on spirits the *bona fide* produce of distillers who distil from the produce of land owned or occupied by them (termed "agricultural distillers") a sum not exceeding £14 per 127 gallons at 10 per cent. under proof. For the purpose of making such advances the Government is empowered to raise a loan of £100,000 sterling.

—— **Income Tax.**—Part II. imposes an income tax which is calculated to tax wealth rather than mere means of comfortable subsistence. Incomes under £1,000 per annum (excepting incomes of companies and incomes derived from shares) are exempt, and however large the income may be, the first £1,000 is exempted. The tax is not a permanent one, and is leviable only on incomes accrued during the year ending on June 30th, 1904. On incomes in excess of the £1,000 tax is 6*d.* in the pound up to £2,000; on that in excess of £2,000, an additional 9*d.* in the pound up to £5,000; and on incomes in excess of £5,000 an additional 1*s.* in the pound. It follows that an income of £2,000 pays 1,000 sixpences (£25); £3,000 pays £25 plus 1,000 ninepences (£37 10*s*), and so on; and that the amount payable by De Beers is very substantial.

The rules for ascertaining "incomes" are fairly clear. The term is defined as embracing all gains or profits derived or received by any person or company in any year, by any means, and from any source within the Colony, and all rents, interests, salaries, wages, allowances, pensions, stipends, charges, and annuities.

The tax is payable on such "incomes" as arise or accrue—

(*a*) to any person *wheresoever residing* from any "trade" (including profession, calling, employment, business, mining, and quarrying) carried on *in the Colony*, whether the same be carried on by such person or, in his behalf, wholly or in part by any other person;

(*b*) to any person *wheresoever residing* as salary (accountable for pension purposes in the public service) or by way of pension or allowance from the public revenue;

(*c*) to any person *wheresoever residing* from any kind of property within the Colony, or from loans, investments, deposits of money, or contracts therein;

(*d*) from any source whatsoever within the Colony (a sort of drag-net clause; sub-clause (4) of s. 50).

But the following incomes are *exempted* from income tax:—

(*a*) the incomes of the Governor and his personal staff (sub-section (6) of s. 52) as well as of Imperial military and naval officers and servants stationed in the Colony;

(*b*) incomes arising to non-residents from Government and municipal debentures, inscribed stock and Treasury Bills;

(*c*) incomes of charitable, educational, and ecclesiastical public institutions, life assurance and such other companies or societies as are not carrying on business for profit to be divided among shareholders;

(*d*) revenue of friendly and building societies, harbour boards, municipalities, and divisional councils.

In assessing incomes the following *deductions* are to be made:—

Losses, outgoings including expenses actually incurred *in the Colony* in the production of the income, expenditure in repairs of trade premises, machinery, etc., fair compensation for wear and tear of trade machinery, etc., and losses in another trade exercised by the taxpayer himself or by his partner. Payments by civil servants to the Pension Funds and incomes derived from shares in a company liable to pay income tax are also deducted.

No deduction is, however, allowable in respect of domestic or private expenses, cost of maintenance of family and establishment, any loss recoverable under insurance, income tax, or portions of incomes carried to a reserve or capitalised.

From *trade* incomes are *not* to be deducted rent, etc., of dwelling houses or domestic premises, money not exclusively expended for trade purposes, interest which might have been made on capital employed, or debts—except such as are bad or doubtful.

It will have been observed that non-residents are taxed on incomes—with the exemption and deductions referred to—derived from sources within the Colony.

Non-residents whose incomes derived from Cape Colonial sources do not—after deductions and exemptions—exceed £1,000 are of course exempt; that is to say, the income of a resident at home derived from extra-colonial sources is not taken into account; and as long as Imperial officers are stationed in the Colony, it appears that their incomes, though partly derived from purely Colonial sources, are exempt from the tax.

Non-resident companies must be represented by a "public officer" residing in the Colony specially appointed by or in behalf of the company for the purposes of the Act. If no appointment is made, the Commissioner of Taxes is empowered to nominate as "public officer" the director, secretary, or other officer. In the case of banks the chief agent is deemed

to be the public officer. Failure to make the appointment and keep it filled is punishable by a penalty not exceeding £50 per diem. Companies commencing business in the future are required within one month to appoint their representative for the purposes of the Act.

Agents for absentees and trustees are required to deduct the tax payable, and may become personally liable (sub-s. 4, s. 47).

In the case of absentee shareholders or members, the company is deemed to be the agent.

In the case of persons permanently resident out of the Colony, the tax is payable by the attorney or agent; and every person who receives, controls, or manages the income, or remits or pays it, is deemed to be an agent for this purpose; and the Commissioner is empowered to declare a person to be the agent of a non-resident.

Similar provisions apply to permanent or temporary absentees.

The tax on persons under disability is payable by the trustee, guardian, or curator, as the case may be. Generally, in other cases, the income tax is payable by the person who is legally or equitably entitled to receipt of the income.

In the case of the sale or disposal of goods within the Colony by a person outside the Colony (the principal) through a person here (the agent), whether by sample or otherwise, the taxable amount of income is assessed—in the absence of account sales—at 5 per cent. upon the amount received, and the agent is required to furnish the returns and pay the tax.

In the case of persons or firms domiciled abroad and carrying on business in the Colony as shipowners or charterers, the agent here is liable to income tax at £5 in every £100 payable, here or abroad, to the principal or the agent in respect of passengers, live stock, mails, and goods shipped in the Colony.

Special provisions appear in respect of insurance companies and companies whose business extends to other countries, companies not dividing its profits among members in the Colony, and investments within the Colony by life companies (s. 60).

Women married out of community of property are liable as if unmarried.

For the purposes of administration, the Governor is empowered to appoint, from members of the civil service and pensioners, a Commissioner and a Deputy Commissioner of Taxes and such assessors and clerks as may be necessary. All officials are bound to secrecy.

The mode of assessment is clearly provided for in s. 65 and the following sections. An appeal lies to a Court (specially constituted by Proclamation) which may state a case to the Supreme Court.

Liquor Traffic (No. 34).—The important subject of liquor traffic is dealt with in Act No. 34, which secures much-needed reforms, and more especially in respect of the law relating to clubs. The statute subjects all liquor licences to the control of the Licensing Court. Wholesale licences are

thereby placed in practically the same position in regard to control as the retail licences; and the certificate of the Licensing Court is also a condition precedent to the issue of a club licence; and, in order to suppress "bogus" clubs—which in certain portions of the Cape district have become prevalent—the Court is empowered to refuse renewals in cases in which the members fall below the limit of twenty-five, the club is not a *bona fide* one, is used mainly for drinking, is one in which excessive drinking habitually occurs, or where strangers are allowed mainly for the purpose of obtaining liquor after ordinary close time.

The Act also increases the penalty for "shebeening" and other liquor offences. The law allows wholesale dealers to supply certain quantities of liquor only, or dozens of bottles contained in "unbroken cases."

The Act declares the meaning of "unbroken case" and defines it as one containing only the same *kind* of liquor; nevertheless, it expressly allows cases of dozens of mixed wines or liquors to be sold by wholesale dealers if actually exported—as is frequently done during Christmas time—by purchasers to friends at home and abroad.

Shop Assistants' Holidays (No. 27).—A reform of no little benefit to shop assistants is provided by Act No. 27. This is intended to render the previous law more effectual, and to prevent the small dealers—and more especially the Asiatics—from having the power of deciding whether or not there shall be a half-holiday. The means adopted are the limitation of the right to vote on the question to those shopkeepers having in their employ at least two indoor shop assistants who are not of the family of the employer. A proviso in the amended Act which, in practice, rendered the amended Act—in so far as Cape Town is concerned—abortive, is repealed, with the hoped-for result that the shop assistants of Cape Town will have the compulsory half-holiday which has been so far denied them.

Patents (No. 28).—The Patents Act, No. 28, is the remains of a far more comprehensive bill designed to bring our law into line with Imperial legislation, and so to pave the way for some measure embracing the Empire within its provisions. Unfortunately the bill could not, through pressure of time and the intricacy of its subject-matter, be passed in its entirety. The Act, however, is effectual in protecting inventors who exhibit at the projected industrial exhibition, and also provides against forfeitures to patentees who have faultlessly failed to pay their fees. It also empowers the Attorney-General to obtain assistance in the discharge of the onerous duties imposed upon him under the existing law.

Local Works Loans (No. 25).—This Act, in amending the Local Works Loans Act, secures the appropriation to educational purposes solely certain funds therein mentioned. It also transfers the administrative functions vested in the Commissioner of Public Works to the Colonial Secretary.

2. NATAL.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—50, the greater part being Local or Municipal.

Territories (No. 1).—This provides for annexation to the Colony of certain territories previously forming part of the Transvaal Colony, shortly referred to as the "Northern Districts." Provision is made by Act No. 3 for the parliamentary representation of these Districts.

Indian Children (No. 2).—Every child of Indian immigrants is, on attaining in the case of males sixteen years of age and in the case of females thirteen years, required either to go to India or if they remain in Natal to remain under indentures or to take out year by year a pass or licence. A free passage is given to India.

Imperial Navy (No. 5).—This provides for payment annually to the Admiralty of £35,000 towards His Majesty's navy.

Sale of Land (No. 7).—Any purchaser on a sale of land by auction buying for a person other than himself is to disclose the name of such purchaser; on failure to do so the auctioneer may treat the bidder as himself the purchaser. If the person named as purchaser disclaims the purchase, the bidder must also pay the transfer duty. These provisions apply—*mutatis mutandis*—to purchases by alleged agents at sales which are not public sales.

Title to Land (No. 8).—This Act authorises the Registrar of Deeds to grant a certificate showing by endorsement on the title-deeds and diagrams the consolidation of contiguous properties owned by the same person.

Explosives (No. 10).—Extends the law as to the importation of explosives by sea to the importation of explosives over any inland border.

Natal Museum (No. 11).—Incorporates the Trustees of the Natal Museum and defines their powers. It also provides for free admission to the Museum.

Post Office (No. 12).—Authorises the Governor to make regulations, *inter alia*, for the insurance of letters and parcels, and to arrange for extending such system of insurance to the United Kingdom or any British possession or foreign country.

South African Customs Union (No. 14).—This Act provides for the Colony entering into a South African Customs Union, the States composing which are to be notified by proclamation.

The duties henceforth to be paid on imported goods and merchandise are set forth in the schedule to the Act. A rebate is allowed on any goods and articles the growth, produce, or manufacture of the United Kingdom imported therefrom into Natal for consumption therein or in any Colony, Territory, or State of the Union to the extent specified in the schedule to the Act.

An additional duty is imposed on bounty-fed sugar. Other duties are dealt with in detail.

Rinderpest (No. 28).—With a view to preventing the spread of this disease any veterinary surgeon or stock inspector who has reason to believe that any cattle are infected may direct such cattle to be isolated and inoculated with glycerinated bile or serum, and the owner or person in charge of such cattle is bound to carry out the order.

Cattle sold at any market or public auction are to be deemed to be warranted free of rinderpest, and so too cattle sold privately, unless otherwise agreed.

Rabies (No. 29).—Any person may lawfully destroy any dog showing open symptoms of rabies, or known or reasonably believed to have been bitten by a rabid dog or other rabid animal. Any veterinary surgeon or police constable may likewise destroy or order the destruction of any dog he may believe to be dangerous upon evidence of its having been in contact with a rabid animal; but this is not to give immunity to any person who destroys a dog wilfully or without reasonable grounds. The Governor may issue a muzzling order. The muzzle must be of a pattern approved by Government.

Immigration (No. 30).—This is to exclude what is compendiously described as the "prohibited immigrant," including persons unable through deficient education to write, in a European language, persons having no visible means of support, idiots or insane, persons suffering from a loathsome or dangerous contagious disease, convicts, prostitutes, and persons deemed undesirable immigrants by the Minister.

Such persons making their way into the Colony may be removed or imprisoned, or arrested on suspicion. For the purpose of removal the Government may contract with the masters of vessels to carry back the immigrant.

The master of a ship arriving at Natal is to furnish a list of all passengers not forming part of the crew and is liable to a penalty of £100 for each "prohibited immigrant" landed.

Passes may be granted for a temporary visit or for embarkation.

Brothels (No. 31).—Any person convicted of keeping a brothel is liable to three months' imprisonment without the option of a fine, and to six months' for a second offence. Premises occupied by one or more women known to be common prostitutes and carrying on prostitution therein are to be deemed a brothel.

A manager, tenant, lessee, or lessor with knowledge of a brothel is to be deemed a keeper of it. The onus of proving the keeping of premises as a brothel is on the prosecution.

Any householder may complain to a magistrate of any premises in his street or vicinity, and the magistrate, after taking his information on oath, may issue his warrant for the arrest of the accused, or previously to doing

so authorise a sergeant of police to enter the premises at any hour for the purpose of discovery.

Contracts to let premises for a brothel are to be void. A person procuring or attempting to procure any girl under twenty-one for prostitution is liable to two years' imprisonment, but the evidence of one witness only —unless corroborated—is not to be sufficient to convict.

Procuring defilement by threats, fraud, or drugs is punishable with five years' imprisonment. Persons knowingly living on the earnings of prostitution or soliciting for immoral purposes are liable to two years' imprisonment, and if a male to twenty-five lashes. A person living with a prostitute is to be deemed *primâ facie* to be knowingly living on the earnings of prostitution.

Illicit sexual intercourse between any white woman and any coloured person is made unlawful. Any keeper of a brothel in which such intercourse takes place is liable to five years' imprisonment, and in case of a male twenty-five lashes.

Rhodesian Redwater (No. 32).—This disease, otherwise known as East African coast fever, is common among cattle. The present Act is an attempt to extirpate it by quarantining, destroying, or dipping any infected cattle and declaring certain districts to be "infected areas."

Militia (No. 36).—This Act creates a militia force in lieu of a volunteer force for the defence of the Colony. The force is to consist of all the male inhabitants of European descent in the Colony from the age of eighteen to fifty with certain exceptions—judges, ministers of religion, mail carriers, police officers, etc. The Governor is Commander-in-Chief, with District Commandants under him. The strength of the active militia, in peace time, is not to exceed 4,000 men. It is to receive such pay as may be voted by Parliament. Every Government or aided school or college in the Colony is to have a cadet corps. There are detailed provisions for securing obedience to orders and other incidental matters.

Native Marriages (No. 44).—No minister is to solemnise any marriage between natives according to Christian rites unless licensed to do so by the Governor.

3. ORANGE RIVER COLONY.

[*Contributed by* W. R. Bisschop, Esq., LL.D.]

Ordinances—Lieutenant-Governor in Council, Nos. 1 to 35 of 1903.

Naturalisation.—No. 1 provides rules for the naturalisation of aliens on the lines of Ordinance Transvaal No. 46 of 1902 (Journal, N.S., vol. xii. p. 398).

Natives.—No. 2 provides for the exemption of certain deserving natives

from the operation of the existing Law relating to passes on the lines of Ordinance Transvaal No. 28 of 1902 (Journal, N.S., vol. vi. p. 393).

No. 7 regulates the sentences of lashes, and limits the number of strokes which may be awarded by the Courts or under the prison regulations (cf. Ordinance O.R.C. No. 3 of 1903 *infra*).

Justices of the Peace.—No. 6 extends the jurisdiction of special justices of the peace in cases of contravention of such laws and proclamations as are set out in the schedule to the Ordinance, and which shall have occurred within the area of their jurisdiction.

South African Constabulary.—No. 20 vests all the jurisdiction, powers, and duties heretofore vested in and imposed upon the municipal police in the Colony in the South African Constabulary.

Railway Police.—No. 23 contains similar provisions to Railway Police Ordinance Transvaal No. 18 of 1903, but vests the right of appointing constables in the Lieutenant-Governor (on the application of the Railway Commissioner) and not in the resident magistrates, as in the Transvaal.

Suppression of Brothels and Immorality.—No 11 renders the keeping of a brothel a criminal offence, and makes provisions for the prohibition of the immoral exploiting of women for the purpose of gain. Penalties are provided against the intercourse of white women and natives (cf. Ordinance Transvaal No. 46 of 1903).

Prisons.—No. 3 abolishes Chapter XII. of the Law Book regarding punishments, and regulates the prison system in the Colony. It creates a Director and an Assistant Director of Prisons, who shall be visiting magistrates of every prison in the Colony with powers of jurisdiction as possessed by resident magistrates in regard to offences committed by officers and prisoners. The gaolers and other officers of every prison (with the exception of Bloemfontein) and the discipline in any prison shall be under the authority and supervision of the resident magistrate of the district, and such magistrate shall try all cases in which offences have been committed by any such officer or prisoner.

Special provisions are made for offences committed by prisoners in or outside the prison and by persons other than prisoners, mainly consisting of aid given to prisoners for escape.

The rule of the late Orange Free State that convicts should not be employed in working for officials or private persons is abolished; and it is now provided that, subject to the regulations to be framed by the Lieutenant-Governor in Council for fixing the conditions upon which prisoners may be employed by public bodies or private persons, any resident magistrate may at his discretion or by order of the Director of Prisons contract with any public body, company, or individual for the employment of persons sentenced to imprisonment with hard labour for three months or any less period. For the employment of persons sentenced to other terms of hard labour, the order or authority of the Colonial Secretary is required. Terms

and conditions as to safe custody and maintenance shall be stipulated by the magistrate.

Mining.—No. 4 provides for the granting of Mynpacht-briefs to prospectors on Government lands subject to the same provisions as those contained in Law No. 17 of 1899 regarding Mynpacht-briefs on private lands, and in so far amends Arts. 1 and 2 of Law No. 27 of 1894 regarding the prospecting, developing, and working of precious metals, precious stones, and minerals on Government lands.

Liquor Licences.—No. 8 abolishes Chapter CVIII. of the Law Book regarding the liquor trade and its amending Laws of 1895, 1897, and 1898, and also Chapter CX. of the Law Book regarding clubs, as well as the temporary Liquor Licensing Proclamation Orange River Colony No. 14 of 1902, and codifies the law regarding liquor licences on lines similar to those of the Liquor Ordinance Transvaal No. 32 of 1902 (Journal, N.S., vol. xii. p. 396).

The Act describes the different licences which can be granted. Restriction of the number of licences has been provided by the stipulations that no wholesale or retail liquor licences shall be granted outside any town, village, or digging under Government control; that licensing Courts—either on their own accord or on objection being raised to the granting of any certificate for a new licence—shall decide whether the number of premises already licensed is sufficient for the requirements of the neighbourhood; that no more than one wholesale or retail or bottle liquor licence shall be held in any town, village, or digging by the same person.

The "local option" of the Transvaal Ordinance has not been taken over, but restrictions are made against the import of intoxicating liquor into the Colony without a permit, and also to a certain extent against the removal of liquor from one place to another in the Colony.

Prohibitions are enacted against the sale of intoxicating liquor to coloured persons, while provisions are made for a "black list" to be kept by the resident magistrates.

The Law also provides penalties for the adulteration of liquors.

Offences against the Ordinance may be summarily tried by the resident magistrate of the district where the offences are committed.

No. 22 amends the Liquor Licensing Ordinance Orange River Colony of 1903 in a similar way as the Liquor Licensing Amendment Ordinance Transvaal No. 17 of 1903.

Incorporated Law Society.—No. 9 repeals Chapter XX. of the Law Book and provides for the formation and constitution of the "Law Society of the Orange River Colony," which shall take the place of the Orange Free State Law Society.

All duly admitted attorneys of the High Court and notaries public shall *ipso jure* be members of the society. Provisions are made for the payment of annual subscriptions, the constitution of the Council and election of

officers, the powers of the Council, Council meetings, the framing of by-laws, the articles of clerkship, and the procedure to be followed when the Council shall be informed of any professional misconduct.

Stamps and Licences.—No. 10 repeals Chapters LXV. and LXVI. of the Law Book regarding stamp duties and office fees, and the amending Laws regarding the same of 1896 and 1898, as well as Arts. 1, 2, and 3 of Chapter CIII. regarding assurance companies.

Regulations are provided for the compulsory use of stamps on the documents set out in the schedule to the Act. Both stamped paper and adhesive stamps are admitted. The use of stamped paper or adhesive stamps shall be optional for bills of exchange or promisory notes, while special provisions are made for the stamping of notarial acts and policies of insurance.

All persons exercising a profession or trade, occupation, business, or calling as enumerated in Schedule C to the Act shall be obliged to take out a licence on *pœna* of a fine. The licence shall be for a year or half a year and shall be taken out within twenty-one days after the commencement of such year or half-year. Trade licences are transferable by endorsement in the presence of the resident magistrate.

Assurance companies whereof the head office or place of business is not situated within the Colony, but which do business within the Colony, shall be required to deposit with the Colonial Treasurer securities to the value of £5,000 in case of fire and accident assurance companies, and £10,000 in case of life assurance companies, provided that the income derived from such securities shall be received by the depositor.

Fencing.—No. 12 enacts that the members of the Fencing Commission, mentioned in Chapter CXXIII. of the Law Book, shall be appointed by the Lieutenant-Governor with the advice of the Executive Council.

Surveys.—No. 16 repeals Chapter LVIII. of the Law Book regarding the Surveyor-General's Department and its amending Laws of 1892 and 1898, as well as the Proclamations Orange River Colony Nos. 9 and 12 of 1902, and creates a Surveyor-General's office to fulfil the requirements of a Deeds Registry for landed property (cf. Ordinance O.R.C. No. 33 of 1902 : Journal, N.S., vol. xii. p. 383). It provides for the appointment of a Surveyor-general, whose chief duty—among the duties set out—will be the examination of diagrams of farms, and the issuing of title deeds on diagrams found correct by him. It regulates the survey of all farms and divisions of farms in the Colony, and authorises the Surveyor-General to enter upon any lands for the purposes of making a survey.

The unit of measure of length—save in towns where the English foot has already been accepted—shall be the "Cape foot" as enacted by Act No. 9 of 1859 of the Colony of the Cape of Good Hope.

Examinations shall be instituted for land surveyors, but all persons admitted as Government land surveyors in Great Britain and Ireland

or in any British possession shall be admitted as land surveyors in the Orange River Colony, on proving that they have passed an examination equivalent to those required to be passed in the Colony of the Cape of Good Hope.

No. 30 provides for the necessary measures for the survey of land required for railways, and the compensation to be paid for damage or hindrance caused thereby.

Prohibited Degrees of Marriage.—No. 31 repeals the provisions of Chapter XCI. of the Law Book, and again sets out the law in force in the late Orange Free State regarding the degrees of consanguinity and affinity which prohibit marriage, viz. limiting the prohibition of consanguinity (either by legitimate or illegitimate birth) to the third degree, and the fourth degree in exceptional cases, and limiting the prohibition of affinity to the direct line.

Education.—No. 27 contains similar provisions to those of the Public Education Ordinance Transvaal No. 7 of 1903. The authority for allowing free education is, however, vested in the Lieutenant-Governor solely, while registration of teachers shall be introduced when the supply of qualified and certificated teachers in the Colony shall in the opinion of the Government justify such a course.

Vaccination.—No. 29, whilst repealing Part II. of Law No. 31 of 1899, renders the vaccination of children compulsory, and regulates that every child born in the Colony shall be vaccinated within six months after its birth, and also that every child in the Colony shall be vaccinated or re-vaccinated within a period of six months after such child shall have reached the age of twelve years.

Special provisions are made for the vaccination or re-vaccination of all coloured children and the registration of their names.

Animal Diseases.—No. 13 makes provisions against the spread and for the stamping out of lung sickness, milt sickness, red water, rinderpest, glanders, and other infectious or contagious diseases amongst animals, by enacting measures for the prohibition of the importation of animals affected with any infectious or contagious diseases, their destruction or segregation, and the disposal of carcases of infected animals. Regulations are made for the compensation of owners or occupiers of land, who shall have detained or kept separate such animals, at such rates as may be agreed upon by them with the resident magistrate, or in case of disagreement may be fixed by the Lieutenant-Governor.

Resident magistrates may declare areas infected, and forbid the removal of animals therefrom, while the Lieutenant-Governor may proclaim infected areas and prohibit the entry of such animals into the Colony from beyond the boundary.

Special provisions are made against the spread of glanders.

Scab.—No. 14 repeals Law No. 3 of 1893, and re-enacts measures against the spread of scab amongst sheep, goats, and other animals.

Brands.—No. 15 regulates the registration of brands by any owner of stock in the Colony, and authorises the Lieutenant-Governor to make, amend, alter, or repeal such regulations as may be necessary in pursuance of and for the proper carrying out of the provisions of this Ordinance.

Rabies.—No. 17 makes rules for the prevention of rabies amongst dogs within the Colony.

Finance.—No 18 appropriates the sum of £795,981 to the expenditure of 1903.

No. 32 appropriates the additional sum of £35,000 to pensions and grants and other expenditure of the Colony for the year 1902-1903.

No. 33 appropriates the sum of £558,685 to the expenditure of the year ending June 30th, 1904.

Coal Tax.—No. 25 imposes a tax of 3*d.* per ton upon all coal mined and sold from land other than Crown land within the Colony, to be payable by the owner of the mine from which such coal has been mined to the resident magistrate or civil commissioner of the district in which such mine is situated.

Excise.—No 26 imposes a duty of 4*d.* per imperial gallon on all beer brewed within the Colony or imported thereinto from any part of the Customs Union, and extends the provisions of Law No. 18 of 1897, as amended by Ordinance No. 14 of 1902, to any such beer, and a duty imposed thereon.

Customs.—No. 34 ratifies the Customs Convention between the South African Colonies and makes provisions similar to those of the Customs Union and Tariff Amendment Ordinance Transvaal No. 41 of 1903. It regulates the levying and collecting of the duties, thereby repealing the Customs Law of the late Orange Free State (Chapter LXIII. of the Law Book) and the Amending Acts of 1896 and 1898.

Burial Grounds.—No. 5 provides for the enclosure and maintenance as burial grounds for certain of the British and Boer forces who died from wounds or otherwise in the late war on the lines of Proclamation Transvaal No. 20 of 1902 (cf. Journal, N.S., vol. xii. p. 388).

Guarantee Fund.—No. 19 establishes a guarantee fund in security for the fidelity of officers of the public service of the Colony.

Land Settlements.—No. 21 amends the Lands Settlements Ordinance (Orange River Colony No. 22 of 1902; cf. Journal, N.S., vol. xii. p. 385).

Military Manœuvres.—No. 28 regulates the military manœuvres to be authorised by the Lieutenant-Governor in Council within specified limits and within a specified period of the year not exceeding three months.

Bloemfontein.—No. 25 repeals Chapter LXXXV. of the Law Book and its amending Law of 1899, together with Art. 68 of Chapter LXXXIV. of the Law Book and Ordinance Orange River Colony No. 30 of 1902, and codifies the provisions for the municipal government of Bloemfontein.

4. TRANSVAAL.

[*Contributed by* W. R. Bisschop, Esq., LL.D.]

Ordinances—Lieutenant-Governor in Council, Nos. 1 to 69 of 1903.

Liquor Laws.—No. 2 amends s. 36 of the Liquor Licensing Ordinance Transvaal No. 32 of 1902 (Journal, N.S., vol. xii. p. 396), and No. 17 provides a further amendment, rendering it lawful for any Receiver of Revenue, without requiring any payment or any certificate of any Licensing Court, to issue licences for the sale of liquor to police and volunteer corps canteens within his district.

No. 68 authorises the sale of malt liquor to persons employed in railway construction (Railway Employees' Liquor Licence) and further amends the Liquor Licensing Ordinance Transvaal No. 32 of 1902.

Explosives.—No. 4 amends Law 27 of 1896 on explosives by making the provisions of Arts. 51 to 80 of that law regarding the storage and use of explosives in work applicable to factories of explosives, and by providing at the same time that the Lieutenant-Governor shall have power to frame rules (to be published in the *Government Gazette*) for the protection of life and property in such factories and for regulating the importation, removal, and storage of safety fuse.

Peace Preservation.—No. 5 amends the Indemnity and Peace Preservation Ordinance Transvaal No. 38 of 1902.

Registration of Deeds and Mining Rights.—No. 6 amends Proclamation Transvaal No. 35 of 1902 (Journal, N.S., vol. xii. p. 387) by substituting terms for the filing of diagrams of mining rights and of stands, by fixing penalties for not doing so, and by providing for the appointment of deputy registrars.

No. 65 amends the Deeds Proclamations Transvaal No. 10 of 1902 (Journal, N.S., vol. xii. p. 387), and incorporates with it the practice in the Deeds Office of the late South African Republic in cases where land was proclaimed a township and was divided into "erven" which were numbered and shown in a general plan of the town filed in the said Deeds Office, viz. to keep a register of the said "erven" and to assign a separate folio to each "erf," and thereupon to treat the said "erven" as being duly registered as such, and to require on transfer of the said "erven" a separate deed of transfer for each "erf."

It further enacts that every notarial deed contemplated by s. 14 of Law No. 7 of 1883 and s. 16 of Law No. 20 of 1895 (Mineral Rights) and every notarial lease executed subsequent to Proclamation Transvaal No. 8 of 1902 shall in future not only be registered separately, but a note thereof shall also be made against the title deeds of the properties affected thereby.

Trigonometrical Survey.—No. 11 gives facilities to the Superintendent for the Trigonometrical Survey of the Colony for carrying out such survey and for the erection and preservation of trigonometrical beacons.

Land Surveyors.—No. 55 repeals Proclamation Transvaal No. 4 of 1902 and makes provisions for the due qualification of land surveyors.

Public Education.—No. 7 provides for the establishment of a Department of Public Education under the Director of Education, and for the establishment, inspection, and control of schools (Journal, N.S., vol. xii. p. 387). The Lieutenant-Governor shall have power to include in these schools elementary and high schools, training schools for teachers, technical schools for mining and agriculture, schools for the mentally or physically defective, reformatory schools, and such others as may from time to time be found necessary. Bursaries and scholarships may be provided, and also grants for establishing hostels and orphanages and the foundation of public libraries. Teachers are obliged to hold certificates. Tuition may be given free. Religious instruction, not exceeding two hours a week, shall be given in elementary schools, while at the wish of the parents provision may be made for supplementary religious teaching as well as for exemption from attending the classes for religious instruction.

The Dutch language shall be taught, if requested by the parent or guardian, but for not more than three hours a week, or—if religious teaching in the Dutch language be required as well—for not more than five hours a week altogether.

Private schools must be registered, and quarterly returns given to the Department of Public Education of the number, names, and qualifications of the teachers employed and of the attendance of scholars. The sanitary regulations laid down by the Department of Public Health shall be observed and the schools shall be open to inspection. The teachers are required to hold certificates.

Local consultative and advisory committees may be appointed by the Lieutenant-Governor.

Administration of Justice.—No. 1 codifies the law of criminal procedure in the Transvaal. A synopsis hereof is given in Journal, N.S., vol. xi. pp. 154-60.

No. 10 provides for the extension of the jurisdiction of the Supreme Court in criminal matters (see Journal, N.S., vol. xii. pp. 389-91); the Supreme Court to have jurisdiction over all offences triable within the Colony and to be a Criminal Court of Appeal.

The Witwatersrand High Court shall have jurisdiction over all offences committed in the Witwatersrand district.

Further provisions are made for the holding of Circuit Courts, the Colony to be divided in two or more Circuit Districts, and the Circuit Courts to be held at least twice in every year. The Courts shall be Courts of Record and have criminal jurisdiction. The records shall be removed to the Supreme Court within one month of the close of each Circuit Court.

Appeals in civil cases shall lie from the Circuit Courts to the Supreme Court in a similar manner as provided for the Witwatersrand High Court, but neither of them shall have any appellate jurisdiction. Rules and regulations shall be framed by the Supreme Court.

Certified copies of records shall be accepted in the Supreme Court as *prima facie* evidence of such records.

No. 15 authorises resident magistrates to admit accused persons to bail in cases summarily tried under their ordinary or special jurisdiction. The provisions of ss. 106-13 of the Criminal Code, 1903, regarding recognisances are made applicable to these Magistrates' Courts.

No. 16 confers all the powers and jurisdiction of a resident magistrate as provided by Proclamation Transvaal No. 10 of 1901 to the magistrate and assistant magistrate of the Native Court of the Witwatersrand District (Journal, N.S., vol. x. p. 305, and vol. xii. p. 391).

No. 35 regulates the pensions of the judges of the Transvaal Supreme Court, who are entitled to retire at the age of sixty or earlier in case of permanent infirmity. The rate of pension depends on the number of years of service, with a minimum of ten years, and shall not be less than one-half nor exceed two-thirds of the average salary of the three years immediately preceding such retirement. In case of retirement within ten years of service on the ground of infirmity, the rate of pension shall be left entirely to the Lieutenant-Governor for the time being.

Special provision is made for the pensions of colonial judges transferred to the Transvaal Bench and Transvaal judges who are transferred to other Colonies.

No. 36 gives the magistrates power to punish for contempt of Court committed in the Magistrates' Courts, under the powers conferred by the Magistrates' Courts Proclamation Transvaal No. 21 of 1902 (Journal, N.S., vol. xii. p. 390).

Juries.—Nos. 28, 39, and 69 amend the Jury Ordinance Transvaal No. 10 of 1902 (Journal, N.S., vol. xii. p. 391).

Wills.—No. 14 regulates the execution of non-notarial wills made after January 1st, 1904, and decides the competency of witnesses assisting the execution of such wills, therewith repealing Law No. 7 of 1895 regarding the attestation of certain documents, so far as it relates to wills. It also provides that in wills which are notarially executed it shall no longer be obligatory for the notary public to read over the will to the testator or testatrix in the presence of the subscribing witnesses.

Legislative Council.—No. 34 defines and declares the powers and privileges of the Legislative Council. Freedom of speech in debates or proceedings, unimpeachable in any Court of Law, is granted to every member of the Council. The Council shall have power to order by summons the attendance of witnesses and to punish for contempt shown to any such orders. Warrants shall be issued by the President, and the sheriff and

his officers and all constables and other persons shall be obliged to assist in the execution of such warrant. Persons creating, or joining in, any disturbances in the Chamber during the Council meetings may be arrested without warrant, while punishment is provided for the witnesses who are thus summoned before the Council, and who wilfully and corruptly give false answers.

Municipal Councils.—No. 38 provides rules for elective municipal councils. It sets out the qualification of councillors, who shall annually elect a mayor from among them. The councillors shall not be paid, but they may vote an allowance out of the expenditure of the municipality to the mayor. All municipalities are divided into wards, and the list of voters, which is made up annually, shall contain the names of persons and companies owning or occupying ratable property of the assessed value of £100 or £300 respectively or occupying premises of the gross annual value of £24.

Each ward shall be represented by three councillors, who shall remain in office for three years, but so that every year one of them shall seek re-election.

Special provisions are made for the municipality of Johannesburg, where the councillors shall elect a deputy mayor to represent their mayor during his absence.

Further provisions are made for the nomination of candidates and polling; for the amount of electoral expenditure allowed; the election agent, whom every candidate must name, but he may name himself; the prevention of corrupt and illegal practices and illegal payment and hiring; the disqualification of electors; the limitation of time for prosecution under this Ordinance; and the hearing of election petitions.

Both the Pretoria and Johannesburg Municipal Councils, which shall be elected under this Ordinance, are to take over all the privileges, jurisdiction, rights, and liabilities of the councils existing at the time when this Ordinance comes into force.

Municipal Corporations.—No. 58 repeals Proclamation Transvaal No. 28 of 1901 and makes provision for the establishing of municipality corporations and urban district boards in certain towns in the Colony. Either on the presentation of a petition signed by not less than three-fourths of the councillors of an existing municipality, or by not less than twenty-five persons registered as voters for the election of members of the board of health or the urban district board where no municipality exists, or of his own accord, the Lieutenant-Governor shall have power to declare any town or village to be a municipality, to assign a name to it, to describe the boundaries thereof, and to unite and sever municipalities or portions thereof.

Every municipality shall have a council with a town clerk and other officials; it shall have the general control of all public roads, parks, ferries, and squares and other public open places; it shall have power to acquire and construct tramways and other works and to lay out locations for natives;

it shall have general powers for making by-laws regarding cemeteries, markets, fire brigades, libraries, public paths, pounds, slaughter-houses, and special powers for incurring the necessary expenditure, for making grants of money and others. It shall have the power to make by-laws regarding public health, buildings, sales, weights and measures, control of streets and traffic, water and light, and natives.

In case a by-law affects any mining company in respect of the management of its mining operations or the control of the property on which such operations are carried on, such proposed by-law shall be forwarded to the Chamber of Mines for its observations, and on its return it shall, together with such observations and the replies thereto from the municipal council, be forwarded to the Lieutenant-Governor, who shall not confirm or reject this proposed by-law without first having heard the Commissioner of Mines.

Special powers are given to the council to enforce the observance of their by-laws, and regulations are set out for the providing of a revenue for the Council.

Municipalities.—No. 43 provides for the levying of rates in municipalities and districts, and repeals ss. 38 to 56 inclusive of the Pretoria Municipal Proclamation No. 7 of 1902, and the Johannesburg Rating Proclamation No. 38 of 1902.

No. 64 confers on municipalities powers for the expropriation and acquisition of lands, and powers for carrying out sewerage and drainage work.

Johannesburg.—No. 3 and No. 9 confer borrowing powers on the Johannesburg Municipality, in connection with Ordinance Transvaal No. 27 of 1902 (Journal, N.S., vol. xii. p. 393).

No. 19 regulates the acquisition by the Town Council of land and buildings belonging to private persons within such part of Johannesburg as has been specified in the schedule to the Ordinance for the improvement of its sanitary condition and the removal of conditions dangerous to the public health, as well as the compensation to be given for the same, such compensation to be mutually agreed upon between the parties, or otherwise to be settled by arbitration. (Cf. the report of the Commission appointed on September 16th, 1902, to enquire into the Johannesburg Insanitary Area Improvement Scheme, Journal, N.S., vol. xii. p. 393.)

No. 21 enables the Town Council to obtain and approve of certain townships within the added area.

No. 23 extends the borrowing powers of the Johannesburg municipality.

No. 62 confers further powers on the municipality of Johannesburg regarding tramway rates, hospitals, and charitable institutions of the late Stadsraad.

Pretoria.—No. 26 makes temporary provision for the government of the municipality of Pretoria.

Natives.—No. 27 amends the Native Passes Proclamation Transvaal No. 37 of 1901.

No. 29 legalises marriages between coloured persons solemnised prior to the coming into operation of Law No. 3 of 1897.

Finance.—No. 13 applies £4,494,000 to the service of the year ending June 30th, 1903.

No. 31 provides for the raising of a loan of £35,000,000 for the acquisition of existing and the building of new railways, the clearing of deficits and former debts of the South African Republic, the payment of compensation to loyalists in Cape Colony and Natal, the payment of repatriation and compensation charges in the Transvaal and the Orange River Colony, land settlement expenses, and the carrying out of public works. The loan shall be a charge upon general revenues and assets and be redeemable at par within fifty years, while provision is made for the formation of a sinking fund.

No. 36 provides for the payment by the Transvaal to H.M. Imperial Government of a sum not exceeding £5,000,000 as a contribution to the expenses of the late war, out of the net revenue derived by the Government of the Colony from the sale, lease, or other disposal of the right to mine gold, silver, or precious stones on Crown lands, and from any tax, licence, duty, or other impost on any gold, silver, or precious stones to be discovered in the Colony, or on the right to mine such minerals or the profits derived from such mining, such contribution to be made in annual payments.

No. 61 applies £3,508,896 for the service of the year ending June 30th, 1904.

Sugar Duty.—No. 8 and No. 12 enable the Lieutenant-Governor to suspend until September 1st, 1903, the duty on sugar and all other articles the produce of South Africa imported into the Transvaal.

Customs.—No. 41 ratifies the Customs Union Convention of May 24th, 1903, made between the several South African Colonies and set forth in the schedule annexed to the Ordinance. It fixes the duties to be paid on certain articles and the articles which shall be allowed to enter the Colony duty free.

A rebate—of 25 per cent. of the duty chargeable on certain classes of goods at an *ad valorem* rate, and of the whole duty in the case of certain goods liable to a duty at an *ad valorem* rate of 2½ per cent.—shall be granted on all goods and articles which are the growth, produce, or manufacture of the United Kingdom. The same rebate shall be granted to other British Colonies in case they grant reciprocal treatment to goods imported into such Colonies from the South African Colonies.

The Lieutenant-Governor shall have power to suspend certain duties by Proclamation.

Railway Police.—No. 18 gives powers to all station-masters and station officials, permanent way inspectors, ticket inspectors and collectors, and all such like officers appointed by the Commissioner of Railways for the arrest, removal, and detention of all persons trespassing on the railway or its works or buildings, or contravening its laws, regulations, or by-laws.

It further enables the resident magistrates, on the application of the Railway Commissioner, to appoint railway constables for the preservation of the peace and the security of persons and property against any offences committed on the railway, its works or buildings, or the trains, roads, warehouses, lands, and premises belonging to the railway. Their dismissal shall equally be in the hands of the resident magistrates.

Railways.—No. 20 amends and consolidates various Volksraad Resolutions and regulates the acquisition by the Government of property of private persons within the Colony for railway purposes, and the compensation to be given for the same, such compensation to be mutually agreed upon between the parties, or otherwise to be settled by arbitration.

It is specially provided that no lines shall be constructed so as to injuriously affect the working of or the adit to any mines.

No. 60 regulates the working of railways in the Colony. It regulates the general administration of the company, the company's liability as carrier of passengers and as carrier of property, the punishment of offences which may be committed by railway servants or otherwise, the prevention of injuries to stock, the bringing of actions by or against the administration, the causes and effects of accidents, and the telegraph and postal services.

Ordinance Transvaal 25 of 1902 (Journal, N.S., vol. xii. p. 398) and a number of First Volksraad Resolutions and laws of the late South African Republic regarding the management of railways are repealed.

Concessions.—(*a*) *National Bank of South Africa, Limited.*—No. 33 confirms a contract made between the National Bank of South Africa, Limited, and the Colonial Government modifying in certain respects the concession granted by the Government of the late South African Republic (and confirmed by the Volksraad of the said Republic) to the "Nationale Bank der Zuid Afrikaansche Republiek." On the one hand, the bank surrenders its exclusive privileges and concedes that its notes shall no longer be legal tender nor be free from stamp duty, nor that the bank shall be exempted from payment of licences on its branches. On the other hand, the Government waive their right of exercising any control or supervision over the management or administration of the business or affairs of the bank, or over any alteration or amendment of its memorandum or articles of association.

With the exception of the cancellation of the clauses mentioned in Schedules A and B to this Ordinance, the provisions of the former concession remain in full force. The bank retains the Mint, but shall not have the right to coin or issue British sterling from that Mint.

(*b*) *Spirituous Liquors.*—No. 53 provides for the cancellation of the concession for the exclusive right of distilling or manufacturing spirituous liquors within the late South African Republic which was granted on June 22nd, 1885, and belonged to the Eerste Fabrieken Hatherley Distilling Company, Limited.

(*c*) *Explosives.*—No. 59 repeals a number of Resolutions passed by the

First Volksraad in its sitting from the 1st to the 5th of September, 1893, and cancels the contracts made between the Government of the late South African Republic and L. G. Vorstman of Pretoria, and dated respectively October 25th, 1893, May 24th, 1894, and December 20th, 1899, whereby an exclusive concession was given to "De Zuid Afrikaansche Fabrieken voor ontplofbare stoffen Beperkt" for the manufacture of explosives.

It is moreover forbidden to import or export explosives without a permit for such importation or exportation from the Inspector of Explosives or his deputy.[1]

Mining.—No. 42 amends the Base Metal Law No. 14 of 1897 and enacts that no persons shall be entitled to peg out a claim under Law No. 14 of 1897 on any ground held under a licence or mining title issued under Laws Nos. 15 and 22 of 1898 for the mining of base metals in the late South African Republic. It further provides that persons who possess such licences or mining titles under the said Law of 1898 on proclaimed or unproclaimed Crown lands shall be entitled to prospect and mine for any base metals or other mineral substances within the ground so held.

Certificates of being a recognised discoverer of such base metals may be given by the Lieutenant-Governor to any person who claims to have discovered base metals on Crown lands.

No. 50 provides for the issuing of certificates of competency to persons engaged in mining.

No. 52 authorises the Lieutenant-Governor to appoint a Commission for the purpose of reporting on the ownership of all mining rights and stands in the district formerly known as the Malmani Gold Fields, many of the books and documents relating to such rights and stands having been destroyed during the late hostilities.

No. 54 makes provisions and regulations for the proper working of mines, for their works and machinery, thereby repealing the Mining Regulations of the late South African Republic laid down in Law No. 12 of 1898 and Law No. 11 of 1898 on Boilers and the use of Machinery. It also repeals the prohibition of Sunday labour laid down in Art. 2 of Law No. 28 of 1896, in so far as it applies to the working of a mine, but re-enacts the clause of Act No. 12 of 1898 regarding the carrying on of necessary work.

The Ordinance itself contains general provisions regarding the power of the Lieutenant-Governor to make general rules, and of the mine managers to make special rules, for the maintenance of order and discipline in the mines, regarding Sunday labour, the construction of railway sidings or tramways, the driving of connecting tunnels, the age of boys employed below ground—which is limited to fourteen instead of twelve years (as under the old Act)—

[1] The Customs Ordinance No. 41 of 1903 exempts all blasting compounds from the payment of duty on importation from one South African Colony into another.

the obstruction of, or disobedience to, orders of officials, and the penalties for contravention of the regulations and for acts or omissions causing danger or injuries.

The Regulations themselves are set out as appendices to the Ordinance, special regulations being enacted under s. 3 of the Ordinance as to the working of the mines, others as to the machinery (boilers) used in the mines, and thirdly such as contain instructions for mine surveyors in the Transvaal.

The provisions of the former Acts are much amplified and modified where necessary.

Crown Lands.—No. 57 repeals the Crown Lands Disposal Ordinance Transvaal No. 40 of 1902 (Journal, N.S., vol. xii. p. 397), together with Laws No. 4 of 1883, No. 10 of 1892, and No. 15 of 1895, and regulates afresh the establishment of the Department of Lands and Surveys, and the duties of the Commissioner of Lands, who shall be advised by a Land Board. It further provides for the disposal of Crown lands, the opening and keeping of special registers for such lands, and the reserves which the Lieutenant-Governor shall be entitled to make in favour of the Crown or for disposal in such manner as he shall deem best for the public interest. Such reserves may be placed under a Board of Management, which shall be entitled to make by-laws. Rights to mineral products and precious stones on or under any Crown lands remain reserved to the Crown in any case.

Precious Stones.—No. 66 repeals the Diamond Law No. 22 of 1898, and re-enacts provisions for the prospecting for, digging and mining of, precious stones. It contains regulations regarding the prospecting on Crown lands and on private land which in the main points do not differ from those contained in the old Law, nor do those regarding the duties and rights of a discoverer of precious stones.

The Lieutenant-Governor shall have the right to proclaim any mine or mining area on Crown lands, but no mining area shall be proclaimed on any land without the consent of the owner thereof, nor shall any proclamation of a mine or mining area on private land be issued without the consent of the owner until after three months from the date of a notice given to him by the Commissioner of the Lieutenant-Governor's intention to issue a Proclamation.

The rights of owners of land are much extended. Their share of a proclaimed mine shall be in proportion to the proclaimed area, and the Crown shall be entitled to the remaining undivided portion. In case of Crown lands, the discoverer of precious stones shall stand in the position of the owner. Besides prospecting, the owner will be allowed to dig for precious stones even if the Lieutenant-Governor does not see fit to proclaim the mine. The owner may claim to work the mine, provided he commands the capital to do so, while the profits are divided between the owner of the mine and the Crown.

If the owner refuses to work the mine, or fails to find the necessary capital, or fails to notify the Commissioner within a proper time of his discoveries or fails to carry out the decisions of the Board for settling differences, then the Lieutenant-Governor may call for tenders, and if no satisfactory tenders are received, may lease the mine to the owner on such terms as may be agreed upon.

In the case of alluvial diggings the discoverer is entitled to fifty, the owner to one hundred, claims, but if no diggings are proclaimed within three months after the date of the certificate lodged with the Registrar by the discoverer of precious stones, the owner and the discoverer shall be entitled to dig for stones on the claims allotted to them.

After alluvial diggings have been proclaimed and the owner and discoverer have selected their respective claims, the remaining area shall be thrown open for public pegging if the Lieutenant-Governor deems such best, or else the claims shall be sold or otherwise disposed of. The rules for pegging are the same as those contained in Law No. 15 of 1898, which rules shall apply in so far as they are not specially abolished.

Regarding native compounds, the rules formerly in existence are maintained and amplified, especially those forbidding the payment of wages in food, directly or indirectly. In the new Ordinance are not taken over the provisions of Law No. 22 of 1898, viz. that all articles for trade in the compounds shall be provided by the shopkeepers in the district, and that such articles shall be sold at the actual selling price of the goods and without profit.

The remaining sections deal with stands and penalties.

Diamonds.—No. 63 applies with certain modifications the provisions of the Diamond Trade Act, 1882, of the Cape Colony to the Transvaal, and these supersede the provisions of Diamond Law No. 22 of 1898 of the late South African Republic. The Ordinance does not take over the Special Courts for Mining Offences of the Cape Colony Act. Offences under the Ordinance in the Transvaal will be brought before the ordinary Courts. Also are not taken over the provisions of the amending Act of the Cape Colony, No. 34 of 1888, "to make better Provision for the Protection of Natives and the Inspection of Compounds" in Griqualand West. Special penalties are provided for maliciously placing a rough or uncut diamond in the possession or on the premises of any person with intent that such person shall be convicted under the terms of the Ordinance.

Indemnity of Burghers.—No. 22 gives full force of law to the fourth clause of the Conditions of Surrender signed May 31st, 1902, at Pretoria, and guarantees an indemnity to all burghers for any acts done in connection with the prosecution of the war.

Protection of Cattle.—No. 24 amends the provisions of Ordinance Transvaal No. 35 of 1902 (Journal, N.S., vol. xii. p. 398) by enabling the Commissioner of Lands to authorise the slaughter of animals which are no

longer capable of breeding, or which are within an infected area as defined by the Diseases of Stock Ordinance, 1902.

Military Manœuvres.—No. 25 facilitates and regulates the execution of military manœuvres, and the compensation to be paid for damage arising thereby to persons or property.

Game.—No. 30 amends the Game Preservation Ordinance Transvaal No. 29 of 1902 (Journal, N.S., vol. xii. p. 398) and gives the Lieutenant-Governor power to make rules and regulations for the proper carrying out of that Ordinance.

Water.—No. 32 provides for the establishment of a Water Board for the purpose of supplying water to the Witwatersrand area, the Board to consist of eleven members chosen respectively by the Lieutenant-Governor, the Transvaal Chamber of Mines, the Town Council, and other local authorities of Johannesburg. Members may be interested in contracts with the Board, but shall have to disclose their interest, and such disclosure shall appear in the minutes of the Board meetings. Wide powers are given to the Board for the carrying out of their duties, while the Lieutenant-Governor may from time to time alter the limits of supply and advance moneys to the Board for the proper carrying out of the provisions of the Ordinance.

Irrigation and Water Supply.—No. 67 facilitates the carrying out of surveys and of investigations which may be deemed necessary for the purpose of establishing irrigation and other works for supplying water to the inhabitants of the Colony.

Public Holidays.—No. 37 establishes ten public holidays and entitles the Lieutenant-Governor to from time to time appoint by notice in the *Gazette* any day to be observed as a public holiday. It amends accordingly the Transvaal Proclamations No. 11 (Bills of Exchange) and No. 15 (Interpretation of Laws) of 1902 (Journal, N.S., vol. xii. pp. 388 and 392).

Repeal.—No. 40 repeals in whole or in part some hundred and seventy Laws, Volksraad Resolutions, and Government Notices of the late South African Republic. (Cf. Proclamation Transvaal No. 34 of 1901, Journal, N.S., vol. x. p. 307.)

Protection of Deserted Wives and Children.—No. 44 lays upon every person who is able, wholly or in part, to maintain himself or herself or his or her family, the duty of doing so on pain of fine or imprisonment. The resident magistrates may make an order for maintenance against a father or husband, whom he may summon to appear before him. An appeal will lie from such order to the Supreme Court.

Reciprocity rules are provided with regard to other parts of His Majesty's dominions, while special provisions are made as to persons in the service of the Government.

Juvenile Offenders.—No. 45 renders it lawful for the Lieutenant-Governor by warrant to remove juvenile male offenders, who are sentenced by a competent Court to imprisonment or to detention in a reformatory,

to the Cape Colony, in order to be placed in a reformatory there until the expiration of their sentences.

If it be for the benefit of any such offender, he may be apprenticed in the Transvaal to any useful calling or occupation, a contract for that purpose to be drawn by a resident magistrate at the direction of the Attorney-General, either for the time of his sentence or, with the consent of any parent or guardian, until he comes of age.

Special provisions are made for such contracts of apprenticeship.

Prevention of Immorality.—No. 46 repeals Law No. 11 of 1899 and makes new regulations and provisions for the prohibition of brothels and the prevention of prostitution, either by procuring women for immoral purposes, or by allowing houses to be used for immoral purposes, or by detaining women for similar purposes. Provisions are made to prevent immorality between white women and natives, the enticing of commission of immoral acts, and the living of men on the earnings of prostitutes.

Marks on Merchandise.—No. 47 applies the provisions of the Merchandise Marks Acts, 1887 and 1891, of the United Kingdom (50 & 51 Vict., c. 28, and 54 & 55 Vict., c. 15) *mutatis mutandis* to the Transvaal.

Crown Liabilities.—No. 51 regulates the liability of the Crown for acts or omissions committed by its servants. Actions shall be laid against the Attorney-General, and the Colonial Treasurer shall pay the sum awarded.

Incorporation of Societies.—No. 56 provides for the proper registration of societies and associations formed in the Transvaal for any lawful object and which have been approved of by the Lieutenant-Governor. Every such society shall be entitled to hold property and borrow money upon mortgage or debentures, to make by-laws, to have its committee or council of officers, and to sue and be sued in its corporate name.

VI. WEST AFRICA.

[*Contributed by* ALBERT GRAY, ESQ.]

1. GAMBIA.

Ordinances passed—16.

Wireless Telegraphy.—An Ordinance (No. 1) is passed for the assertion of the Government telegraph monopoly, chiefly in view of the use of the Marconi system. It is unlawful to use any telegraphic apparatus except under licence from the Governor, who is to make rules and regulations on the subject. The same objects are attained by somewhat differing Ordinances in the Colonies of Lagos and the Gold Coast.

Munitions of War.—The Customs Ordinance, 1882, is amended by a provision enabling the Governor in Council to prohibit by proclamation the importation or exportation of munitions of war, and to make rules and regulations for giving effect to the prohibition.

Registration of Designs.—An Ordinance (No. 4) of the normal type makes provision for this purpose. As no existing Ordinance is repealed, it may be presumed that the subject is now dealt with for the first time in this Colony.

Commissions of Enquiry.—General legal authority and machinery are provided (No. 6) for commissions which the Governor may issue for enquiry "into the conduct of any officer of the public service of the Colony, the conduct of any head chief or headman, the conduct or management of any department of the public service or of any public or local institution, or any matter whatsoever arising in the Colony or Protectorate in which an enquiry would in the opinion of the Governor be for the public welfare." The particular provisions deal with such matters as substitution of commissioners, oath of office, secretary, division of opinion, witnesses, false evidence, counsel, etc. It may be noted, as regards division of opinion, that the chairman is to have a second or casting vote, but no provision is made for minority reports. When the subject of enquiry is the conduct of any official, he is to be entitled to be represented by counsel.

Rates.—Exemption from rates for local improvements in the town of Bathurst is given in respect of churches, chapels, schools, and other educational institutions (No. 7).

Vacant Lands.—Where any lands are unoccupied, or without any known or certain owner, or are occupied by a person who appears to have no title, the Colonial Secretary may make an affidavit setting forth the facts, and file the same in the Court with a petition that the land may be declared to be Crown property. Due summonses are to be published calling upon any party interested to establish his title, for which purpose appearance must be entered within six months after the summons. The question of title is determined by the Supreme Court (No. 9).

Bank of England Notes.—The notes of the Bank of England are by Ordinance No. 12 declared not to be legal tender in the Colony.

Intoxicating Liquor.—No. 13 is a licensing law of a simple character. There are two classes of licences, (*a*) including wholesale and retail, and (*b*) wholesale only. For the former the fee is £50 for the year; for the latter, £15. Provision is made for the punishment of offences by licensees, one of which is that of selling liquor to children apparently under sixteen years of age. Sale of liquor on Sunday is prohibited; and drunkenness in a street or public place is in itself an offence, apart from disorderliness.

Education.—A Board of Education is constituted by Ordinance No. 14. The Board is to frame rules and regulations with respect to the grants for primary and secondary education, examinations, certificates, fees, etc.

The thorny question of religious instruction is also left for the Board to settle by rules.

Public Holidays.—Seven days in the year are scheduled (No. 15) as public holidays, including Empire Day (May 24th).

Customs Tariff.—The import duty on spirits is by Ordinance No. 16 raised to 4*s.* per imperial gallon.

2. GOLD COAST.

Ordinances passed—30.

Rivers Conservancy.—Ordinance No. 2 applies to six specified rivers and is divided into two parts. The first deals with dredging and requires that a licence must be obtained from the Governor. The object of the dredging appears to be minerals and precious stones. The second part of the Ordinance requires licences to be taken out for all steam vessels intended to be used on the scheduled rivers.

Shipping Casualties.—Ordinance No. 5, which deals with shipping casualties, wreck, and salvage, is in common form and does not call for special remark. Some mistakes in the Ordinance are corrected by a subsequent Ordinance (No. 21).

Foreign Marriages.—An ordinance (No. 6) gives effect to the Foreign Marriage Order in Council, 1903.

Uniforms.—The wearing of His Majesty's military uniforms by unauthorised persons is prohibited, and an additional penalty is incurred by wearing uniforms in such manner as to bring them into contempt.

Trade Marks.—An amendment of the Trade Marks Ordinance, 1900, is made by Ordinance No. 17, which provides that no trade mark shall be registered for any imported cotton piece goods, silk piece goods, or any goods comprised in the miscellaneous class in any rules made under s. 39 of the principal Ordinance, unless such trade mark has been and is registered in the United Kingdom as the trade mark of such goods. Should not the prohibition have been limited to piece goods imported from the United Kingdom?

Wireless Telegraphy.—It is unlawful to use this mode of telegraphy except by licence from the Governor (Ordinance No. 22).

Corporal Punishment.—The punishment of flogging and whipping are regulated by No. 30, an Ordinance similar in form to those passed in other Colonies in 1902 (see Review for that year).

3. LAGOS.

Ordinances passed—10.

Adulteration.—No. 3 is an Ordinance containing the now usual provisions on this subject.

Registration of Designs.—The Ordinance of 1902 is repealed without any substitution (No. 4).

Trade Marks.—A law similar in intention to that of the Gold Coast prohibits the registration of a trade mark for piece goods unless the mark has been registered in the United Kingdom. This Ordinance, be it noted, is not confined to imported goods.

Flogging.—Revised flogging Ordinances are prevalent in the Crown Colonies. They are not, however, of precisely the same pattern. No. 7, for this Colony, limits the strokes to twenty-four for an adult and to twelve for a juvenile.

Wireless Telegraphy.—No. 9 prohibits this mode of telegraphy except by licence of the Governor. The Ordinance is similar to those of the other West African Colonies.

Newspapers.—Ordinance No 10 requires the registration of the name, publishing office, printer, publisher, and proprietor of every newspaper, the execution of bonds to meet penalties for libel, etc.

4. SIERRA LEONE.

Ordinances passed—25.

Administration.—The administration of the estates of non-native civil servants who may die leaving neither widow nor next of kin is provided for by No. 2. The Attorney-General or other person appointed by the Governor is the administrator. Notices for claims against the estate are to be published. Personal trinkets, etc., are to be reserved from the realisation. The remuneration of the administrator is not to exceed 5 per cent. of the value of the estate. The balance with the personal effects is to be sent to England for distribution through the Crown Agents.

Peace Preservation.—This Colony still exhibits in its legislation signs of recent unrest. Ordinance No. 3 provides for the enlistment of special constables and authorises justices to close licensed premises in case of riot. Other provisions can only be put in force by Proclamation of the Governor. They enable the police to disperse assemblies, to arrest persons carrying bludgeons, etc.

Auctioneer's Licences.—The following persons are authorised (No. 4) to hold auctions without taking out an auctioneer's licence: Sheriffs and other officers of Court, pound-keepers, police officers, prison officers, and receivers of wrecks. The exemption in favour of police and prison officers is confined to unclaimed property not exceeding £10 in value at any one sale.

Protectorate.—The scheme of judicature for the Protectorate of this Colony, as set forth in Ordinance No. 6, is similar to that established in

Gambia and Gold Coast. There are three Courts to which natives are amenable—the Court of the Native Chiefs, the Court of the District Commissioner, and the Circuit Court. Full power is given to the two latter Courts to disregard the technicalities of English law in cases where an adherence thereto would work injustice. Counsel and solicitors are not allowed either in the Native Court or in the District Commissioner's Court, except in cases where the Commissioner commits for trial to the Circuit Court.

The native chiefs are not allowed to entertain certain cases, *e.g.* civil cases as to land between chiefs; criminal cases of murder, witchcraft, slave-raiding, cannibalism, matters relating to the secret murder societies, tribal fights.

The native chiefs are entitled personally to take the fees of their civil and criminal Courts, also the fines lawfully imposed by them.

The District Commissioner exercises civil and criminal jurisdiction. In civil matters he takes cases involving title to land between chiefs, actions to which any non-native is a party, and actions where the value in dispute does not exceed £50. In criminal matters he takes cases punishable on summary conviction, also misdemeanours and larceny, embezzlement and receiving stolen property, provided that he is satisfied that the offence will be adequately punished by imprisonment for three months or fine of £10. He also hears the cases which are specially excluded from the jurisdiction of the Native Courts.

The Circuit Court, presided over by a judge of the Supreme Court, takes all cases beyond the jurisdiction of the District Commissioner. The Circuit Court takes the opinion of native chiefs as assessors in cases where questions of native law or custom arise, and in every criminal case in which natives are concerned.

Any person, not being a native, can appeal in a criminal case from the Court of the District Commissioner to the Circuit Court.

Insurance of Public Buildings.—The Governor is to set aside annually a sum of £200 towards a fund for rebuilding any public building that may be destroyed or injured.

Murder Societies.—The Human Leopard and Alligator Societies Ordinance, 1901,[1] passed as a temporary law, expired on December 31st, 1902. In consequence of recent murders it was revived in July 1903 (No. 9), and by No. 25 continued until December 31st, 1904.

Customs Tariff.—A useful amendment is made by No. 10. By the Customs Law of 1900, exemption from duty was given to "machinery for agricultural and industrial purposes." This exemption is now extended to all machinery.

Fire Inquests.—Enquiries into the origin of fires may be made by magistrates, but only on the direction of the Attorney-General, to whom the report is to be sent.

[1] See Journal, N.S., vol. iv. p. 314.

Concessions.—A considerable number of amendments of the law of 1902 are made by No. 18. Many of these consist of the deletion or insertion of words.

Public Loan.—By Ordinance No. 21 power is taken to raise one and a quarter million pounds for railway construction and other public works.

Wireless Telegraphy.—Ordinance No. 22 is similar to the laws passed in the other Colonies.

5. ASHANTI.

Ordinances passed—3.

Rivers Conservancy.—The Ordinance No. 1 on this subject is similar in its terms to Gold Coast Ordinance No. 2.

Administration of Ashanti.—No. 2 is an omnibus law. It applies certain Gold Coast Ordinances; it authorises the Chief Commissioner to confer limited criminal jurisdiction on out-station officers; it prohibits (except under special licence) the introduction of rifles, magazine guns, and their ammunition into Ashanti; it makes patents granted and trade marks registered in the Gold Coast valid in Ashanti; and takes power to the Commissioner to take lands for the public service. With regard to the last provision, it may be noted that compensation does not loom so largely as in the Lands Clauses Act. "No compensation shall be allowed for any land so taken except for growing crops or in respect of disturbance of or interference with any buildings, works, or improvements on or near the land taken." Notice that the land has been taken has to be given by the Commissioner "to the chief to whose stool he believes such land to be attached."

Land Concessions.—Ordinance No. 3, regulating and controlling concessions of land from natives, is similar to those described in our last Review of Legislation.

6. NORTHERN NIGERIA.

Proclamations—15.

Canoes.—All canoes used in any waters of the Protectorate must be registered and licensed (No. 1). Licences are of no less than seven classes, the annual fees varying between £3 (first class) and 5*s.* (seventh class). The licensing is in the hands of the Residents of provinces, and the rating of canoes is based upon the "earning capacity." The rating may be altered on any subsequent licensing. It would seem that without any rule very different rating may prevail in different provinces.

Registration.—All non-natives (except Government servants) must

register themselves annually at the office of the Resident of the Province or at a sub-registry.

Tariff.—An import duty of 2*s.* per cwt. is imposed on salt (No. 4).

Hawkers and Caravans.—"A hawker," it is said in No. 6, "may be called upon to take out a licence in the form," etc.

Every caravan is to pay a toll in each province traversed by it of 5 per cent. *ad valorem* on the merchandise carried, but no caravan is to pay more than 15 per cent. on each different article carried. Where goods carried by caravan have paid customs duty on entering the Protectorate, they are exempt from toll in the province in which the customs duty has been paid, and the maximum duty to which they are subsequently liable is reduced from 15 to 10 per cent.

Native Liquor.—"Native liquor" means all distilled and fermented liquor made in the Protectorate. For the manufacture of native liquor an annual licence of £4 is required; for selling, £2.

Roads.—As history has shown time after time, there is no better sedative for a restless or unruly population than the construction of roads, and it is good to see that the Government of Northern Nigeria are taking the only means available to get the roads made—namely, by requiring the kings and chiefs to make them each in his own district (No. 9). They must not, however, require from their men more than six days' work in each quarter. Every king or chief who properly performs his duty under the Proclamation may get a gratuity of £10 or more.

Criminal Procedure.—An excellent code is comprised in a law of 147 sections accompanied by a schedule of forms (No. 12). When India and all the Crown Colonies have shown the way, and the liberty of the subject is not found to be in jeopardy, possibly England and the United States may bestir themselves to reform a procedure which is more favourable to the criminal than to justice. As in other precedents which have been followed by the Colonial Office in the drafting of these codes, the grand jury is got rid of, and the trial is upon a simple information of the Attorney-General, which takes the place of an indictment. In regard to the provisions relating to information, the precedents of the Indian Criminal Procedure Code have been followed. In regard to the evidence of the accused, the recent English Act has not been followed in terms, but power is given to examine the accused, without his previous consent or any special warning, and without putting him on oath. He is not to be punished for refusing to answer or for answering falsely, but the Court may draw its own inferences.

Provision is made for the so-called "inquisition" where a crime has been committed and no person is charged.

In cases of treason and murder, the Court must not accept a plea of guilty.

Pensions.—A law in the form now normal provides for pensioning public

servants. The regulations are left to the High Commissioner, but the pension must not exceed two-thirds of the highest salary drawn by the officer. European officers may be compulsorily retired at fifty-five years of age.

Preservation of Animals.—Proclamation No. 15 carries out for Northern Nigeria the obligations of the International Convention for the preservation of animals in Africa.

7. SOUTHERN NIGERIA.

Proclamations passed—31.

Native Lands Acquisition.—Persons who are not natives cannot acquire lands from natives except under an instrument which has been approved by the High Commissioner. Any person who appears to have possession of lands without such title may be called upon to prove his title in court (No. 3).

Post Office.—The High Commissioner is authorised by No. 4 to prohibit the importation by parcel or letter post of dutiable and other articles named in the rules.

Acquisition of Lands.—Proclamation No. 5 is a law in the form already adopted in other West African Colonies, providing for the procedure to be adopted in the acquisition of lands for public purposes.

Hospitals.—Power is taken by No. 7 for the establishment of public hospitals and dispensaries. By rules to be made by the High Commissioner, patients may be called upon to pay fees, though these may be remitted.

Streets and Buildings.—A law (No. 11) applicable to Old Calabar and to such other towns as the High Commissioner may apply it by order relates to the management and control of streets and buildings. In Old Calabar the local authority is the Director of Public Works, elsewhere the District Commissioner. It contains a provision that when the High Commissioner by order proclaims any unoccupied land to be an "open space" it shall be unlawful for any person to build upon it. The other provisions are similar to many in our Public Health Acts.

Master and Servant.—The Proclamation of 1901 on this subject is amended in some particulars by No. 12. The chief amendments are directed against the payment of wages in spirituous liquor, while payment in food and medicine are expressly authorised.

Ordeal and Witchcraft.—Special interest attaches to the endeavours made in West Africa to stamp out the more objectionable forms of ordeal and fetish. The leading provision of No. 13 is as follows: "Trial by the ordeal of sasswood, esere-bean, or other poison, boiling oil, fire, immersion in water, or exposure to the attacks of crocodiles or other wild animals, or by any ordeal which is likely to result in the death of or bodily injury to any

party to the proceeding, shall be and is hereby prohibited." The maximum penalties are heavy: ten years' imprisonment for causing or directing the ordeal, and heavy fines for being present at the ceremony.

Any person who accuses another of being a witch or professes himself to be a witch, or who makes or sells any "juju" or charm which is intended to be used for preventing or delaying any person from doing any act which he has a legal right to do, is also liable to severe penalties.

The High Commissioner may also by order prohibit "the worship or invocation of any juju which may appear to him to involve or tend towards the commission of any crime or breach of the peace"; and any person who presides at any such worship in defiance of the order is liable to fine and imprisonment. Chiefs who take part in these ordeals and invocations may be fined more heavily than the commonalty.

The last section, authorising the utter destruction of "any house, grove, or place" in which ordeals are held or proscribed jujus are invoked, would almost seem to be taken from a precedent among the acts of King Hezekiah.

Roads and Creeks.—The means of communication in Southern Nigeria consist rather more of waterways than of roadways. The obligation to clear and maintain these ways is thrown upon the chiefs by No. 15, and, as in the case of the Northern Protectorate, the maximum of labour to which any person is liable is six days' work in each quarter.

Uniforms.—Proclamation No. 16 does not prohibit all wearing of uniforms, as has been done by other West African legislation. The prohibition is limited to such uniforms as may be described in any order of the High Commissioner. There is also an exemption in favour of uniforms imported for the purpose of stage plays, etc.

Divorce.—The jurisdiction of the Supreme Court is limited by Proclamation No. 18. It is expressed to be that exercised in England for the time being. It extends only to non-natives and to such natives as may have been married in accordance with the Marriage Proclamation, 1900.

Flogging.—Proclamation No. 21 on this subject is similar to that noticed above under the head of Lagos.

Newspapers.—The same provisions are made as in the law of Lagos noticed above.

Trade Marks.—No. 29 is a law for the same purpose as those of the Gold Coast and Lagos. It follows the Lagos Ordinance in so far as it is not confined to imported goods.

Native Courts Regulations.—The *Gazette* of this Protectorate publishes several sets of regulations of Native Courts, some of which curiously mark the grade of civilisation to which British law has to be adapted. One regulation provides that, in districts where it is not practicable to enforce payment of fines and fees in cash, it is lawful to accept "brass rods or manillas, tobacco, cloth or other trade goods, in no case, however, gin, in

payment of such fees and fines." The District Commissioner is to determine in the case of each Court whether such payment in kind is to be admitted; where he so allows, the president of the Native Court prescribes a scale on which the values are to be reckoned.

By another native regulation every house has to pay an annual tax of five yams to the chief of the village, in consideration whereof the chief is held responsible for the order and good government of the village.

Another set of rules deals with native marriage. Marriages are of two kinds: (*a*) those in which a big dowry is paid to the father of the wife, or to the chief of the house of which she is a member, and (*b*) those in which the dowry paid is small. The line of demarcation is not fixed, though it is probably well known locally. If a big dowry is paid, the wife becomes a member of the husband's "house"; if she dies, her body is buried by her husband; if she is divorced, she still remains a member of the house; if she marries again after divorce, she still remains a member of her first husband's house, and her children by the subsequent marriage are also members of that house, even though the second husband belongs to another house. If a small dowry is paid, the wife continues to belong to her father's house; if she dies, her body must be sent back to that house for burial; her children also belong to her father's house.

The law relating to adultery is the same in the case of both classes of marriage. Each party is liable to a fine not exceeding £25, and the adulterer may have to pay damages to the injured husband. There are also provisions for alimony in the case of both husbands and wives, among others, that a husband who is unable to support himself may get an order from the Court compelling his wife to maintain him; but he must prove that he is a "good and faithful husband."

VII. SOUTH ATLANTIC.

FALKLAND ISLANDS.

[*Contributed by* Edward Manson, Esq.]

Ordinances passed—5.

Land (No. 1).—The principal Ordinance for this year is one relating to land. It begins by fixing a period of limitation for the Crown's right to sue for land. This period is sixty years. The waste lands of the Crown are to be sold in fee simple and by public auction only, with a reservation of what may be required for public defence or enjoyment. An upset or minimum price is to be fixed and the auction advertised. The conditions of sale

are carefully prescribed. If not sold, the land may be leased or sold privately, but not at less than the upset price.

All diamond and all mines of gold, silver, and other metals and all mines of coal are reserved to the Government.

Driving, hunting, decoying, or destroying wild cattle on waste land without the permission of the Governor in writing is made punishable by a fine not exceeding £50. Certain "reserves" are continued. These may be leased. Improvements are to be assessed and paid for. The lessee of country land may purchase the whole of the land rented by him.

There are a series of provisions as to fences and fencing.

Patents and Trade Marks (No. 2).—Letters patent for any invention may be granted in the Colony to any person holding in the United Kingdom a valid patent for such invention or to his assignee. There is a similar provision as to designs and trade marks. SS. 3–6 prescribe the procedure on application for such a grant.

Supply (No. 3).—This is a supplementary Supply Ordinance.

Duty on Sealskins (No. 4).—Every sealskin imported into the Colony for the purpose of transhipment or exportation is to pay a duty to be fixed by the Governor in Council not exceeding 10*s*.

Jurors (No. 5).—A concession to police magistrates: they need not make out the list of persons liable to serve on juries in alphabetical order.

VIII. NORTH AMERICAN COLONIES.

1. DOMINION OF CANADA.

[*Contributed by* J. A. Simon, Esq.]

Acts passed—General, 74; Local and Private, 132.

Butter—No. 6 prohibits altogether the manufacture, importation, or sale of oleomargarine or other substitute for butter made from any fat other than that of milk or cream.

Chinese Immigration—No. 8 repeals the statutes of 1900 and 1902 and lays down anew elaborate restrictions on Chinese immigration. Every immigrant of Chinese origin, irrespective of allegiance, is to pay a tax of $500 at the port of entry. There are exceptions in favour of diplomatic representatives, merchants, tourists, and students, amongst others. No vessel bringing Chinese immigrants to Canada may carry more than one such immigrant for every 50 tons of her gross tonnage, and no immigrant may be landed until a permit is obtained. Masters of vessels and con-

ductors of trains are made personally liable for the payment of the tax by any Chinese they carry. The fear of Chinese secret societies is emphasised by s. 20, which makes it an indictable offence to take part in the organisation of any sort of Court or tribunal composed of Chinese persons for the hearing and determination of any offence committed by a Chinese person or to carry on such organisation or give evidence before it; but nothing is to prevent Chinese persons from submitting any disputes to arbitration.

Civil Service (Nos. 9 and 10).—This amends the Civil Service Act principally in the matter of salaries, the selection of officers requiring special qualifications, and superannuation allowances.

Contagious Diseases (Animals) (No. 3).—Every owner of animals, breeder, or dealer on observing symptoms of infectious or contagious disease—(defined s. 2)—among his animals is to give immediate notice to the Minister of Agriculture and to the nearest veterinary inspector of the Department of Agriculture. The same duty of giving notice is imposed on any veterinary surgeon practising in Canada.

An owner neglecting to give notice forfeits his claim to compensation for any animals slaughtered. Any person turning out and grazing any diseased animal in any forest, moor, common, open field, waste land, or other unenclosed land is liable to a penalty of $200. A similar penalty is imposed on persons selling diseased animals or throwing their carcasses into rivers. Any suspected animal exposed at a fair may be seized. The Minister of Agriculture may order any diseased animals to be slaughtered and compensation at the rate of one-third of the value of the animal before it became affected.

The importation into Canada or any of its ports of diseased animals may be prohibited, inspectors appointed, areas of infection defined, vessels cleansed, and animals quarantined.

Elections.—No. 12 amends the Dominion Controverted Elections Act by giving the judge at the trial power to adjourn it and to compel the attendance of witnesses.

Immoral Plays (No. 13).—Any lessee or manager of a theatre who presents an immoral, indecent, or obscene play, opera, concert, acrobatic, variety, or vaudeville performance is made guilty of an indictable offence and liable to a year's imprisonment. Any actor taking part in such a piece is liable to three months' imprisonment. Appearing in an indecent costume may be visited with six months' imprisonment. "Theatre" includes "any place open to the public gratuitously or otherwise where dramatic, musical, acrobatic, or other entertainments or representations are presented or given."

Customs (No. 14).—This re-constitutes the Board of Customs and amends the Customs Act in a number of matters of detail.

Customs Tariff (No. 15).—By this, articles which are the growth, produce, or manufacture of any foreign country which treats imports from Canada

less favourably than those from other countries may be subject to a surtax over and above the duties specified in Schedule A to the Customs Act, such surtax in every case to be one-third of the duty specified in the schedule.

Elections (No. 19).—More stringent legislation was, it seems, necessary to prevent interference with the freedom of the voter. This Act re-defines in wider terms the offence of undue influence. Force, violence, or restraint, threats of injury or loss, intimidation, compelling or inducing voters by abduction, duress, or false pretence to refrain from voting are made indictable offences.

Railways.—No. 21 empowers the Exchequer Court of Canada to make an order for the sale of any insolvent railway subject to the legislative authority of the Parliament of Canada at the instance of the Minister of Railways and Canals or for sale or foreclosure at the instance of a creditor holding a lien or charge. "Insolvent" is defined in ss. 5, 6, and 7 of the Winding-up Act.

Expropriation (No. 22).—Any land taken for a public work and found to be unnecessary may be abandoned, and will then revest in the person from whom it was taken. Such revest is to be taken into account in estimating the compensation. Alterations of or additions to public work may be ordered where it will remove the injury to any land injuriously affected.

Fisheries (No. 23).—The use of rockets and explosive projectiles for killing fish or marine animals other than porpoises, whales, and walruses is forbidden: also the use of purse seines for the capture of fish except in certain waters in British Columbia by special fishery licence.

Grain.—No. 24 amends the General Inspection Act by providing for the appointment for certain districts of an official weighmaster to have control of the weighing of grain received into or shipped out from public terminal elevators. "Worm-eaten" pease are to include "buggy" pease.

Inland Revenue.—No. 26 revises some of the duties payable under ss. 46, 240, 241, and 260 of the Inland Revenue Act (R. St. c. 34).

Judges' Salaries (Nos. 27, 28, 29).—The first two of these Acts fix respectively the salaries of the judges of the Supreme Court of the Province of Ontario and of the Court of King's Bench and Superior Court of the Province of Quebec. They range from $6,000 to $3,500.

The third provides for pensions for judges of the Supreme Exchequer and Superior Courts and for County Court judges, disabled by infirmity after thirty-five years' service.

Lead Mining.—No. 31 provides for payment of bounties on lead in lead-bearing ores mined in Canada.

Shipping.—No. 34 defines for the purposes of masters' and mates' certificates the expressions "sea-going ship" and "coasting voyage."

Naturalisation (No. 38).—This amends the Naturalisation Act (R.S.C.

c. 113) by prescribing to what Court in the respective Provinces the certificate is to be presented. Due notice must be given and the presentation be made in open court.

Dominion Notes (No. 43).—These are to be a legal tender in every part of Canada except at the offices at which they are redeemable.

Patents (No. 46).—The object of the Patent Law is the encouragement of the trade and industries of the country. To secure that this end shall not be defeated the present Act provides that a patent and all the rights and privileges thereby granted is to cease and determine at the end of two years from the date of it unless the patentee commences and continuously carries on in Canada the construction or manufacture of the invention patented in such manner that any person desiring to use it may obtain it or cause it to be made for him at a reasonable price at some manufactory or establishment in Canada. By an alternative provision, if the patentee is guilty of neglect the Commissioner of Patents may grant a licence to other persons to work it.

Penny Banks (No. 47).—The Governor in Council may grant a charter of incorporation to any five persons for the purpose of carrying on a bank of this kind. A guarantee fund (defined s. 28) must be established before the bank can begin business. Interest is not to exceed one-half of 1 per cent. in advance of the rate payable to depositors in Government or Post Office Savings Banks. S. 29 defines the securities in which the funds may be invested. A general meeting of the members is to be held once a year. Statements of the condition and business of the bank are to be sent to the Minister of Finance and Receiver-General every half-year.

Railway Labour Disputes (No. 53).—This empowers the Minister of Labour whenever a dispute arises between railway employers and employees which threatens a lock-out or strike to establish a Committee of Conciliation to mediate. If this is ineffectual, the Minister may refer the difference to arbitration under the Act, in which case the findings of a majority of the Board are to settle the matter. The machinery for conducting the arbitration is furnished by the Act.

Railways (No. 58).—This is the most important legislative achievement of the year. It is a complete code in 311 sections dealing with the constitution and duties of the Railway Commission, the incorporation and organisation of the railway company, the construction of railways, their inspection and operation, by-laws, tolls, offences, and penalties. It is an admirable piece of work and sums up all the experience which the last sixty years or more has supplied on this subject.

Revised Statutes (No. 61.)—The consolidation of the Revised Statutes of Canada is proceeding. This is to provide for the incorporation of the recent public general statutes.

Ships and Shipping (No. 63).—Certain deck loading is prohibited in winter.

Shipping Casualties (No. 64).—A Court is appointed to investigate shipping casualties and alleged incompetency or misconduct by masters, mates, or engineers.

Steamboat Inspection (Nos. 66, 67).—Certain vessels are exempted from inspection where oil is used as fuel; a fire test is to be applied.

National Transcontinental Railway (No. 71).—This Act ratifies the agreement relating to this great undertaking.

2. BRITISH COLUMBIA.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—56.

Medical Practitioners (No. 4).—No action is to be brought against the Council by a member or ex-member of the profession for anything done *bonâ fide* under the Act, but a right of appeal is given from the decision of the Council to a judge of the Supreme Court of the Province.

Attachment of Debts (No. 7).—This provides machinery—analogous to our own garnishee proceedings—for enabling a judgment creditor to attach "debts, obligations, and liabilities" owing or accruing from a third person—garnishee—to the judgment debtor.

If the garnishee disputes the debt, an issue may be directed. Similar proceedings may be taken against a partnership, firm, or company.

Bills of Sale (No. 8).—Mortgages and debentures by companies covering land as well as chattels are exempted from registration as bills of sale where duly registered under the Land Registry Act. Bills of sale of goods in a city with a County Court office must be registered within five days. If an action is instituted against the grantor of a bill of sale within sixty days from registration, and judgment entered for plaintiff, the bill of sale is to be void.

Agreements for future advances secured by mortgages on chattels must be accompanied by an affidavit of the mortgage verifying the agreement and its good faith.

Insectivorous Birds (No. 9).—This is the British Columbian birds' charter. It makes it unlawful to shoot, kill, or capture "any bird whatever" or to take or destroy any nest, young, or egg of "any bird whatsoever." The only outlaws are crows, magpies, hawks, owls, woodpeckers, and blue jays, and birds which may be shot under the Game Protection Act, 1898. The scientist may, however, get a permit, and the schoolboy's pastime is not touched: the Act is not to apply to children under fifteen years of age.

Steam Boilers (No. 10).—This defines what steam plant a third-class engineer may take charge of and classifies engineers.

Companies.—No. 12 amends the Companies Act, 1897.

The directors of every company are once at least in every year after setting apart any reserve to declare a dividend of the whole of the accumulated profits and pay the same to the shareholders on demand. They—directors—must convene an extraordinary general meeting at any time on requisition of holders of one-tenth of the issued capital, and must keep specified accounts, which are to be open to the inspection of members. They must also prepare and lay before the company in general meeting every year a balance-sheet containing specified particulars. Auditors are to be appointed by the company at each annual general meeting and paid, and the rights and duties of such auditors are defined. A power of borrowing for the objects of the company is given to all companies under the Companies Act of the Province, 1897, exercisable by the directors subject to any restrictions imposed by the articles of association. This was overlooked when the English Companies Act of 1862 was drafted.

County Courts (No. 14).—This empowers a County Court judge to appoint a receiver and grant an injunction within his territorial jurisdiction in any action sent or proceeding in the Supreme Court.

Judicature (No. 15).—This is an Act of 113 sections dealing with the constitution and procedure of the Supreme Court of the Province and the administration of justice. Law and equity are to be concurrently administered and equitable counterclaims recognised. In the administration of estates all creditors are to rank equally, and provisions as to equitable waste, merger, and the application of the Statute of Limitations to trustees and many other matters analogous to those of the English Judicature Act, 1873, are adopted. Other matters dealt with are judicial districts, local judges, district registries, suitors' funds in court, solicitors, sittings and circuits, trial and judgment, references, evidence, official stenographers, appellate Courts, fees and rules of Court.

Sanitary Drainage Companies (No. 16).—These companies must submit their plans to the Provincial Board of Health, and when these are approved are invested with all the powers for the expropriation of land necessary for the purposes of their undertaking.

Elections (No. 17).—This is an Act of three hundred sections, constituting a complete code for the conduct of elections of members of the Legislative Assembly of the Province and the trial of election petitions. Every agent must be authorised in writing, secrecy in voting is strictly maintained, and bribery and undue influence have very wide definitions. No maximium is fixed for a candidate's election expenses.

Evidence (No. 18).—A slight amendment in the law of evidence. Whenever nationality or race has to be proved, the Court or jury may infer it from the appearance of such person.

Frauds (No. 20).—This is the Statute of Frauds (29 Car., c. 3) re-enacted with some statutory additions (consideration for guarantee, 19 & 20 Vict. [Imperial], c. 97, s. 3, and representations as to credit, 9 Geo. IV., c. 14, s. 6).

Fish and Game (No. 21).—It is made unlawful to take trout between November 15th and March 25th.

The Lieutenant-Governor in Council may declare a close season for deer, elk, wapiti, moose, caribou, beaver, mountain sheep, and mountain goat.

Prisons and Police (No. 22).—This provides for the appointment by the Lieutenant-Governor in Council of a superintendent of police for the Province, of chief constables and constables. Power is given to any justice of the peace to appoint special constables for an emergency. Rules may be made by the Lieutenant-Governor in Council for the management and inspection of prisons.

No spirituous or fermented liquors are on any pretence to be brought into a prison, nor is any tobacco, opium, snuff, or cigars to be given to any convict. The Superintendent of Prisons is to make an annual report to the Attorney-General of the Province as to the number of prisoners received and liberated, their ages, calling, country, crimes, etc. Prisoners may be employed outside the gaol, but must be under strict supervision.

Health (No. 23).—A Commissioner may be appointed to investigate the sanitary condition and surroundings of any place and the cause of any disease or mortality. Logging and mining camps are also to he inspected.

Horticulture (No. 24).—Henceforth no person is to sell fruit-trees, plants, or nursery stock without a licence for such business, to be given for the year only upon an indemnity bond. The reason of this is the danger arising from infected fruit-trees and plants.

Immigration (No. 26).—No person—with certain specified exceptions (s. 4)—is to be allowed to immigrate into the Province who cannot write out at dictation and sign a passage of fifty words in a European language. A prohibited immigrant found in the Province is liable to six months' imprisonment. Assisting prohibited immigrants to contravene the Act is punishable with a fine of $500. Masters of vessels are to furnish lists of their passengers and allow inspection.

Land (No. 30).—Timber leases for a period not to exceed twenty-one years may be obtained on public competition by the tenders of the highest cash bonus. The Act also regulates the mode of obtaining special licences to cut timber and the terms of such licences. A lien for royalties is given to the Crown.

Mechanics' Lien (No. 35).—No fees in stamps or money are to be payable to any judge or officer in an action brought to realise a lien under the Mechanics' Lien Act. A limit is also imposed on costs.

Coal Mines (No. 37).—A person desirous of obtaining a licence to prospect for coal or petroleum must place at one corner of the land to be applied for a post four inches square and four feet high inscribed A.B. and N.E. Corner. A five years' lease may be granted to the prospector on satisfactory evidence of his having found coal.

Coal Mines Regulation (Nos. 38, 39, and 40).—No person is to be employed underground in any coal mine for more than eight hours from bank to bank—*i.e.* pithead—in every twenty-four hours.

"Chinaman" and "Chinese" are defined.

No person is to be employed in a mine with only a single shaft.

Underground workings are to be in charge of an overman and shift boss.

A penalty is imposed for working a mine without a manager. Strict rules are laid down as to lamps and lights, smoking, explosives, and blasting.

There are also provisions for the examination of persons to constitute the Board of Mines.

Motors (No. 41).—Every motor owner is to pay a registration fee of $2 for each motor and obtain a permit. The permit is to be carried and exposed on the motor and the number conspicuously affixed on the back in figures not less than three inches in height. Every motor is to carry a proper alarm bell, gong, or horn, and a lighted lamp or lamps after dusk. No motor is to be run upon any public highway within any city, town, or incorporated village at a greater rate of speed than ten miles an hour, or upon any public highway outside any city, town, etc., at a greater speed than fifteen miles. There is to be no racing. Persons in charge of motors are to take every precaution not to frighten horses and to ensure safety.

Laying Poison (No. 44).—Any person placing poison on his land for the destruction of noxious animals or any purpose whatever is to give notice to all families residing within two miles by posting up notices in the five most public places within twenty-four hours.

Sale of Goods (No. 46).—By this Act certain goods and chattels, though affixed to the realty, are not to become part thereof, but the owner of the realty may retain the goods on paying the amount due.

Railways (No. 52).—Railways and railway property within the limits of municipalities are to remain subject to provincial taxation.

Taxation: Property and Income (No. 53).—This is an Act of 181 sections dealing exhaustively with taxation of real and personal estate and income, including the income of corporations, the mode of assessment, and the payment and collection of taxes.

Minor Amending Acts

Bulls (No. 1).—The Animals Act, 1897, is amended as to the running at large of bulls in certain districts.

Agricultural Societies.—No. 2 requires the consent of the Lieutenant-Governor in Council to the incorporation of an agricultural or horticultural society and limits the public grant to double the amount of the subscriptions.

Law Clerks.—No. 3 exempts barristers' and solicitors' clerks from passing a preliminary examination.

Pharmacy.—No. 5 allows the holders of certain diplomas and certificates to be admitted members of the Pharmaceutical Association of the Province without examination.

Insurance.—No. 27 provides that contracts of insurance by mutual fire companies are not to exceed the term of three years.

Judgments.—No. 28 deals with the form of judgments directing a sale of land, with a view to ascertain the various interests in the land.

Mechanics' Lien.—No. 29 deals with the operation of the conveyance of land sold under the Mechanics' Lien Act.

Liquor Licences.—No. 31 provides for due notice being given of applications for the transfer of licences.

Municipalities.—No. 42 makes a series of small amendments in the Municipal Clauses Act.

3. MANITOBA.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Acts passed—73.

Agriculture.—No. 6 provides for the branding of cattle and the registration of the brands. In all cases of dispute the brand is *prima facie* evidence of ownership.

Elections.—No. 14 divides the Province into forty divisions for electoral purposes.

Mortgages.—No. 25 provides that when a mortgagor is entitled to redeem, he may require the mortgagee, instead of giving a certificate of payment or re-conveyance, to assign the mortgage debt and convey the mortgaged property to any third person; the mortgagor supplying the mortgagee with an abstract of title for that purpose.

The mortgagee may require insurance moneys to be used in making good the loss or damage in respect of which the money was received, or he may require it to be paid towards the discharge of money due under the mortgage. The equity of redemption may be acquired without merger of the mortgage debt.

Public-Houses.—No. 33 requires that all hotels, licensed or unlicensed, all lodging-houses, and every house or part thereof where lodgings are provided for money or other consideration, shall be kept in a clean and sanitary condition, properly ventilated and comfortably heated in cold weather. Where gas is supplied to bedrooms, the meter must not be turned off at night. All future buildings are to have ventilators in bedrooms.

Statutes.—No. 41 brings into force the Revised Edition of the Statutes,

[1] The Session commenced on February 12th, 1903, and terminated on March 18th. Of the Acts passed, twenty-seven were private.

1902, and provides that if the Revised Edition differs from the Acts, the Acts are to prevail as to matters happening before the Revised Edition came into force; all questions arising in future are to be governed by the Revised Edition.

Appropriation.—Nos. 42 and 43 provide $1,730,441 for the expense of the government of the Province for the year 1903.

Amending Acts.—The other public Acts of this Session are mostly confined to short amendments of previous Acts or are of a local character.

4. NEW BRUNSWICK.

The legislation of this State will appear in the next issue of the Journal.

5. NORTH-WEST TERRITORIES.[1]

[*Contributed by* H. STUART MOORE, ESQ.]

1903, Second Session.

Ordinances passed—35.

Appropriation.—No. 1 provides $130,741 for the government of the Province for the year 1903, and $959,150 for the year 1904.

Legislative Assembly.—No. 2 amends the Ordinances relating to the Legislative Assembly. It enacts that any male British subject by birth or naturalisation (other than unenfranchised Indians) who are of full age, and have resided in the Province for twelve months, and in their electoral district for three months, may vote at elections. Any male British subject by birth or naturalisation may be elected to the Legislative Assembly. Ministers on changing offices are not required to seek re-election.

Taxation.—No. 5 imposes succession duties on all estates which exceed $5,000 in value. Estates which do not exceed $25,000 in value, and are left to the father, mother, brother, sister, husband, wife, child, grandchild, daughter-in-law, son-in-law of the deceased, or to any person adopted before the age of twelve years by the deceased, or to whom the deceased for not less than ten years before his death stood in the acknowledged relation of parent, are taxed by duties ranging from 1½ per cent. to 10 per cent. according to the value of the property and the relationship to the deceased. Estates exceeding £2,500 are taxed for the excess at the rate of 5 per cent. Provisions are made for the assessment and collection of these duties.

Easements.—No. 7 amends the Ordinance respecting limitation of actions by providing that the right to the access and use of light or any

[1] The second Session of 1903 began on October 29th and closed on November 21st. Of the Ordinances passed, five would in the United Kingdom be classified as local or private. The Review of the Legislation of the first Session is printed in vol. v. Part II. of this Journal.

easement, right in gross, or profit *à prendre* shall not be acquired by prescription.

Seduction and Illegitimacy.—No. 8 provides that any unmarried female may maintain an action for seduction in her own name, and her father or mother may maintain such an action without proof of service. No. 9 makes the father of an illegitimate child under age liable for his necessaries.

Trusts.—No. 11 regulates the administration of estates by trustees, executors, and administrators. Many of its sections are adapted from the Imperial Trustee Act, 1893 (56 & 57 Vict., c. 53). Amongst other provisions it enables a trustee to apply to the Supreme Court for advice in the management of the trust property, and if he acts on such opinion he is deemed to have discharged his duty, provided he has not been guilty of fraud or wilful concealment or misrepresentation. Every trustee is entitled to be remunerated out of the estate for his work. Such remuneration is fixed by the Supreme Court.

Dentistry.—No. 16 provides for the registration of dental surgeons, the formation of the College of Dental Surgeons and election of its members. Unregistered persons who practise for reward are debarred from recovering their charges and are liable to a penalty of $100.

Insurance.—No. 21 permits of the formation of mutual fire insurance companies by thirty or more persons each having an insurable interest in property exposed to damage by fire.

Agriculture.—No. 28 enacts that an action shall not lie for damages caused by domestic animals unless the property damaged was surrounded by a lawful fence as defined by this Ordinance.

Game.—No. 29 amends the law as to the protection and capture of big game, game birds, and fur-bearing animals. It fixes the close seasons for the various classes, and entirely prohibits the use of traps or snares for the capture of game birds. Non-residents are required to take out a licence. A general licence costs $25, and a bird licence $15. A guest staying with a resident can obtain a five-day licence to hunt with his host for $1.

6. PROVINCE OF ONTARIO.

[*Contributed by* JAMES S. HENDERSON, ESQ.]

Acts passed—133, of which 95 were Local or Private.

Statute Law Amendment.—No. 7 amends the law in various particulars:—

Holidays.—S. 2 provides that whenever a holiday falls on a Sunday the following day is to be the legal holiday throughout the Province.

Corrupt Practices.—S. 5 amends the Election Act by providing that where the trial judges disagree as to whether a candidate or his agent has committed

a corrupt practice an appeal lies to the Court of Appeal, which, if of opinion that a corrupt practice has been committed, shall declare the election void, unless the Court decides that the corrupt practice has been committed in excusable ignorance, or has been committed by an agent without the knowledge of the candidate; but the candidate is not to be disqualified.

Removal of Disqualifications.—S. 6 amends the Act respecting the Legislative Assembly by providing that a person holding any temporary employment in the service of the Dominion of Canada requiring professional skill is not ineligible or disqualified from sitting and voting in the Legislative Assembly.

Surrogate Courts.—S. 11 enacts that where a judge of a County Court who is also judge of the Surrogate Court vacates his County Court judgeship he thereby vacates his judgeship of the Surrogate Court.

Arbitration.—S. 16 repeals s. 8 of the Arbitration Act (which was a reproduction of s. 6 of the English Arbitration Act, 1889) and substitutes more extensive provisions as to the appointment of arbitrators.

Purchase of Equity of Redemption.—S. 18 amends the Execution Act by adding a provision that the purchaser from a sheriff or other officer of the equity of redemption in any personal property is not personally liable to pay or satisfy any encumbrance on the property.

Appeals to General Sessions.—S. 21 amends the Ontario Summary Convictions Act by providing that appeals to General Sessions from convictions or orders shall be heard by the Chairman of the Court of General Sessions without a jury, unless upon the application of either party the Chairman shall otherwise order.

Coroners.—S. 22 enables the Lieutenant-Governor to appoint a coroner for the city of Toronto. It further provides that any coroner within whose jurisdiction the body of a person is lying upon whose death an inquest ought to be held may hold the inquest.

Barrister or Solicitor Trustees.—S. 27 amends s. 43 of the Trustee Act by providing that where a barrister or solicitor is a trustee, executor, or administrator, and has rendered necessary professional services to the estate, an allowance may be made to him in respect of such services.

Assignments for Benefit of Creditors.—S. 29 repeals s. 11 of the Act respecting assignments and preferences by insolvent persons, and substitutes a provision which gives precedence to an assignment for the general benefit of creditors over attachments, garnishee orders, judgments, and executions not completely executed by payment, and of orders appointing receivers by way of equitable execution, subject to the lien for costs of the execution creditor, or the first of them, if more than one.

Guardian of Infants.—S. 31 amends the Infants Act by enabling the Court to appoint a guardian to an infant, whether the infant is or is not entitled to any property.

Companies.—S. 35 amends the Ontario Companies Act by providing that the shareholders of a company with more than six directors may by by-law empower the directors to delegate any of their powers to an executive committee, of not less than three, to be elected by the directors from their number.

Benevolent and Provident Societies.—S. 38 amends the law on this subject by enabling the Lieutenant-Governor in Council to suspend or revoke the corporate powers of such societies, not only when they are using their powers for fraudulent or other unlawful purposes, but also when a society "is reputed to be maintaining or using a place for any gambling or unlawful gaming purpose."

Traction Engines on Highways.—By s. 43 the requirement cast upon persons using traction engines on highways, where no tolls are levied, to strengthen bridges and culverts at their own expense is declared not to extend to engines used for threshing purposes or for machinery used in the construction of highways.

Factories.—By s. 45 no bedroom or sleeping place is permitted to be on the same floor of a building as a shop, bakehouse, or factory, and sleeping places are only to be allowed in the same building as a shop, bakehouse, or factory with the written consent of the inspector.

Lunacy.—S. 49 amends the law on this subject by enacting that where a person who is discharged from an asylum is not in the opinion of the inspector competent to manage his affairs, the inspector who has in his hands any property of such person as committee may apply to the Court to be relieved from his trust.

Judicature.—No. 8 divides the High Court of Ontario into four divisions instead of three as formerly: the King's Bench, Chancery, Common Pleas, and Exchequer—the last-mentioned being the new division. S. 12 enables the Court of Appeal to sit in two divisions when pressure of business requires this arrangement, the additional judges necessary to enable this to be carried out being selected from the High Court judges.

Mortgages.—No. 11 provides that in the case of mortgages made after the passing of the Act the mortgagor in default may, notwithstanding any agreement to the contrary, redeem on giving three months' notice, or on paying three months' interest in lieu of notice.

Land Titles.—No. 12 deals with the Assurance Fund created by the Land Titles Act, excludes claims upon it in certain cases, as *e.g.* where the claimant's negligence has contributed to loss, and in other respects amends the former Act.

Conditional Sales of Chattels.—No. 13 amends the law on this subject by making void conditions or agreements in lien notes, hire receipts, or contracts for the conditional sale of chattels, enabling the plaintiff in any action arising out of such contracts to select his venue, unless at the time when the contract is entered into there was a clause printed in type not smaller than

small pica in red ink and subscribed by the maker thereof in the following words: "Any action which may be brought or commenced in a Division Court in respect or on account of this note, hire receipt, or contract may be brought and commenced against the maker or person liable hereon in a Division Court other than where he resides or in which the contract was made."

Road Companies.—No. 14 amends the General Road Companies Act in various particulars, *e.g.* as to inspection of toll roads.

Insurance.—No. 15 amends the Ontario Insurance Act. It requires that a director shall be the *bona fide* holder of fully paid shares of at least $1,000 in the company. It also enables the assignee of money payable under a policy to sue in his own name; it validates payments made to a payee domiciled or resident in a foreign jurisdiction where such payments are valid by the law of such jurisdiction whether the payee received the money in his own right or in a representative capacity; and it empowers the assured to nominate beneficiaries in lieu of the "preferred beneficiaries" who may have predeceased him.

Loan Corporations.—No. 16 amends the Loan Corporations Act in various particulars, as to the securities on which money may be lent, the limit of deposits, etc.

Street Railways.—No. 17 amends the law on this subject by enacting that where the cars of a company are provided with fenders of a class approved by the Lieutenant-Governor in Council the company is not to be liable for non-compliance with any by-laws or agreements relating to the class of fenders to be used in any city.

Municipalities.—No. 18 is the Municipal Amendment Act. It amends the principal Act in several particulars. It deals, *inter alia*, with the method of annexing a village or town to an adjacent city, town, or village; as to the powers and composition of county councils; as to the councils of towns—the composition of the council varying according to the population; as to voting at elections and punishment of corrupt practices; as to the investigation of charges of malfeasance; as to the authentication, etc., of by-laws; as to the issue of debentures under money by-laws; as to the apportionment of the cost of maintenance of persons committed to houses of refuge. It further enables by-laws to be passed providing for the submission to a vote of the electors at any annual municipal election of any question not specifically authorised by law and as to the procedure on voting. The powers of municipalities are extended by enabling them to prohibit (1) the placarding of bills, etc., which are either indecent or may tend to corrupt or demoralise the public or individuals, and (2) spitting on sidewalks, in public halls and conveyances. By-laws may also be passed for the compulsory commutation of statute labour in unincorporated villages. Municipalities are further empowered, subject to the consent of the Lieutenant-Governor in Council, to establish and work fuel-yards in anticipation of and during a period of scarcity of fue

or such threatened scarcity as may appear to create an emergency; they may also construct and work ferries; they may pass by-laws for the application of the betterment principle in carrying out local improvements.

No. 19 is the Consolidated Municipal Act, which runs to no fewer than 759 sections, being thus longer than the Merchant Shipping Act, 1894, the longest statute passed by the Imperial Legislature. The Act, which consolidates the whole Law on the subject, including the provisions of the preceding Act, is divided into nine parts dealing respectively with (1) municipal organisation, (2) the composition of municipal councils, (3) elections, (4) meetings of municipal councils, (5) principal officers, (6) general provisions, (7) powers of municipal councils, (8) recovery of fines, (9) police villages.

No. 20 amends the Act to permit municipalities to use voting machines by enacting that machines are to be kept locked and sealed for thirty days after an election.

No. 22 is the Municipal Drainage Act. It enables municipalities to appoint two residents as "drainage viewers," whose duty is to accompany the engineer in laying out or repairing drainage works and to assist in the assessment of the properties affected; they are to be paid two dollars a day and necessary travelling expenses. Engineers or surveyors appointed to perform any work under the Act are to furnish detailed accounts under oath.

No. 24 amends the Municipal Waterworks Act by enabling municipalities to nominate and appoint, subject to the approval of the electors, the first commissioners under the Act, or provide for their election.

No. 25 is the Municipal Power Works Act, which enables municipalities to acquire, construct, maintain, and operate all necessary works, plant, machinery and appliances for the development, generation, transmission, transformation, distribution, and supply of electrical and other power and energy, including heat and light. Commissioners may be appointed to report on a scheme, and on the receipt and publication of their report the question of proceeding with the scheme may be submitted to the electors, and in the event of a majority being favourable to the scheme, commissioners are to be appointed for carrying it out.

Assessment.—No. 21 amends the Assessment Act by more clearly defining what public educational institutions and other property are exempt from taxation. It further exempts from taxation incomes not exceeding $1,000 derived from personal earnings, and incomes to the amount of $400 derived from any source other than personal earnings.

Public Libraries.—No. 23 amends the Public Libraries Act as to the method of estimating the legislative grant to libraries.

Highways.—No. 26 amends the Improvement of Public Highways Act. It deals with the annual grants for county roads, and gives county councils in respect of county roads the same powers as those given by

the Snow Fences Act to townships, cities, towns, and incorporated villages of requiring owners and occupiers of lands bordering upon public highways to alter or remove any fences which cause an accumulation of snow or drift and so impede or obstruct such public highways, compensation being made. County councils are exempt from building, maintaining, or repairing of sidewalks on county roads.

Motor Vehicles.—No. 27 is the Motor Vehicles Act. The term "motor vehicle" is defined as including "automobiles, locomobiles, and all other vehicles propelled otherwise than by muscular power, excepting the cars of electric and steam railways, and other motor vehicles running only upon rails or tracks; but nothing in this Act contained shall be construed to apply to or affect bicycles, tricycles, or such other vehicles as are propelled exclusively by muscular pedal powers." Owners of motor vehicles require to be registered and to have a numbered permit exposed on such vehicle, and also attached to or exposed upon the back in a conspicuous place the number of the permit, so as to be plainly visible at all times during daylight, the number to be in plain figures not less than three inches in height. Motor vehicles are to be equipped with a light and also with a bell, gong, or horn, and the same is to be sounded whenever reasonably necessary. In any city, town, or incorporated village the speed is not to exceed ten miles an hour; outside the city, etc., the speed limit is fifteen miles per hour, and the speed is to be decreased at intersecting roads and on bridges. Municipal councils may by by-law set apart any public street on which motor vehicles may be run at higher speeds for test purposes. Driving motors on public highways, in parks, etc., in a race or for a bet or wager is forbidden. Reasonable precautions are to be taken not to frighten horses.

Travelling Shows.—No. 28 requires a licence to be obtained by the person in charge of travelling shows before exhibitions are given. An inspector of criminal investigation may be directed to be present at shows; and the police are to have free access to them at all times.

Public Health.—No. 29 amends the Public Health Act by empowering medical officers of health to enter lodging-houses at any time where there is reason to suspect overcrowding, and to give directions for the abatement of overcrowding or of nuisances arising from the filthy or unclean condition of premises.

Protection of Children.—No. 30 amends the Children's Protection Act. It provides for the appointment in each electoral district of a committee consisting of six persons or more, half of them to consist of women, to be known as the "Children's Committee," each member being known as a "children's agent." The committee is to co-operate with the Superintendent of Neglected and Dependent Children and with the Children's Aid Societies, and to assist in the work of improving the condition of neglected and dependent children, in the careful selection of foster homes, and in the

visitation of children placed in selected families. The committee is further to aim at promoting and encouraging a philanthropic sentiment on behalf of neglected, abandoned and destitute children, and endeavour to obtain voluntary subscriptions for the effective carrying out of the objects of the Act. A child apparently under the age of sixteen who is charged with an offence may, without a conviction, be ordered to be placed under the care of a probation officer, who may be a member of the Children's Committee and who is expected to take a personal interest in the child. No child under the age of fourteen charged with an offence is to be committed to any gaol or police station pending trial. Such a child is, if possible, to be admitted to bail and to be placed in the custody of some relative, friend, or benevolent person willing to be responsible for the child's appearance; if bail cannot be procured, the proper officer is authorised to contract for the temporary care and maintenance of the child with any association or individual possessing facilities for the safe-keeping and proper care of children until the case is disposed of, the expense to be borne by the municipality in which the child has last resided for one year. (See also under Education, *infra*, No. 37.)

Education.—No. 31 sets up Boards of Education in cities having 100,000 inhabitants or more, by whom school inspectors are to be appointed. Such Boards may make provision for special and advanced courses of instruction in high schools.

No. 32 amends the Public Schools Act in certain matters of management.

No. 33 amends the High Schools Act as to grants in aid to high schools by county councils and in certain other respects.

No. 34 amends the Separate Schools Act as to school sites.

No. 36 enables the Lieutenant-Governor in Council to set apart certain Crown lands for the use of Toronto University.

No. 37 amends the Industrial Schools Act. It enables any person to bring before a special sitting of a police or county court any child apparently under the age of sixteen who comes within any of the following descriptions:—

(*a*) who is found persistently begging or who is without a settled home;

(*b*) who by reason of long neglect cannot be satisfactorily dealt with by a Children's Aid Society;

(*c*) who having been made a ward of a Children's Aid Society, and failing to do well in a foster home, is certified by the Superintendent of Neglected and Dependent Children to be in need of further training or discipline;

(*d*) who by reason of neglect, drunkenness or other vices of parents is supposed to be growing up without salutary parental control and education or in circumstances exposing him to lead an idle and dissolute life;

(*e*) who has been found guilty of petty crime, and who in the opinion of the Court should be sent to an industrial school instead of to a gaol.

(*f*) who (being a child between ten and fourteen years of age) has been expelled from school for vicious and immoral conduct.

The Court may after investigation deal with such a child under the Act. Where a boy is beyond the control of the officers of an industrial school, he may be ordered to be confined in prison. Persons committed to an industrial school remain till the age of twenty-one under the guardianship of the school authorities.

Municipal Houses of Refuge.—No. 34 provides for the establishment of county houses of refuge for the reception of persons of the classes described in s. 256 of the Municipal Act. The classes mentioned in that section are (1) poor persons incapable of supporting themselves; (2) persons able to work but who refuse or neglect to do so and are without means of supporting themselves; (3) vagrants; (4) "all such as spend their time and property in public-houses to the neglect of any lawful calling"; and (5) idiots.

7. PRINCE EDWARD ISLAND.

[*Contributed by* H. STUART MOORE, ESQ.]

Acts passed—28.

Married Women.—No. 9 repeals the Married Women's Property Act, 1896, and enacts provisions similar in many respects to those of the Imperial Married Women's Property Act, 1882. It also provides that the property of a married woman dying intestate is to be distributed in the same way as the property of a husband dying intestate.

Appropriation.—No. 15 provides the funds necessary for the government of the Province for the year.

Amending Acts.—Of the remaining Acts of this year, twelve are private in character and the residue deal with short amendments of previous legislation.

8. PROVINCE OF QUEBEC.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—155, the majority being Local or Personal.

Legislative Disqualification (No. 8).—By this Act no person holding an office of emolument under Government is with certain necessary exceptions eligible as a Legislative Councillor or as a member of the Legislative Assembly.

Quebec Election Act (No. 9).—This is an Act regulating in great detail the election of members of the Legislative Assembly.

Education of Jewish Children (No. 16).—Jewish parents have, it appears, claimed the right to have their children educated at the schools under the control of the school corporations—sending the children almost exclusively to Protestant schools. The school boards on their part have refused to acknowledge the claim where the parents are not proprietors of immovable property subject to taxation for the benefit of the schools. The present Act settles the dispute. Jews are to be treated as Protestants for school purposes, and are to pay the school taxes; but Jewish children are not to be compelled to read any religious or devotional books, or take part in any religious exercises to which the parents object.

Taxation.—No. 19 puts a tax on every express company foreign to the Province carrying on the express and forwarding business.

Game Laws (No. 23).—This makes the close season for widgeon, teal, or wild-duck of any kind except sheldrake, loons, and gulls, March 1st to September 1st.

Birch or swamp partridges must not be bought or sold or exposed for sale before October 1st, 1905. A bounty of $5 is to be paid for every wolf's head.

Trade Disputes (No. 25).—Where a dispute exists or is apprehended between employers and employed the Registrar of the Council of Conciliation and Arbitration is, on request by five workmen or the employer or the mayor, to visit the locality and "earnestly endeavour to act as mediator." He is also to do so if the dispute comes to his knowledge through the newspapers.

The Registrar's duty is (*a*) to enquire into the causes of the dispute; (*b*) to prevail on the parties to meet and settle such dispute; (*c*) to promote agreements to submit differences to a council of conciliation or arbitration.

Judicature: The Magdalen Islands (No. 26).—This provides for an appeal from the Court of these islands to the Court of King's Bench at Quebec.

Judicature: Salaries (No. 27).—The annual salary of each judge of the Sessions of the Peace is to be $4,000.

Bar Corporation.—No. 34 amends the Revised Code as to the profession of advocates: thus, for the examination of candidates a professor of every university law faculty is to be associated with the examiners appointed by the Council of a section.

To the disqualifications of advocates enumerated by the Revised Code is further added being found guilty of conspiracy to defraud.

Notaries (No. 35).—This amends in a number of particulars the regulations with regard to notaries, who in the Province are represented and governed by "the Board of Notaries."

Pharmacy (No. 36).—Nothing is to prevent chemists and druggists selling all medicinal preparations containing alcohol so long as these are

sold for medicinal use only; or from selling rectified spirits for medicinal, mechanical, or scientific purposes in quantities of not more than one imperial pint; but every such sale must be recorded.

Municipalities (No. 38).—This is a very long and elaborate Act called "The Cities and Towns Act," creating a municipal code applicable to cities and towns of the Province now or hereafter to be erected into municipalities. Title II. deals with the organisation of the municipality—the constitution and jurisdiction of the corporation, division into wards, the council, mayor, aldermen, committees, and officers of the Council; Titles III. and IV. with the persons qualified and disqualified for office, with the electors and the conduct of elections; Title X. with the powers of the Council and the making of by-laws for the protection of persons and property, and in the interests of public health, decency, and good morals. It also deals with street lighting, water supply, nuisances, free public libraries, census, municipal finances, taxes and licences. Title XII. deals with the Recorder's Court, its jurisdiction and procedure.

The Act is a striking recognition of the growing importance of the municipality in the national life.

Companies (No. 41).—Joint-stock companies in the Province are incorporated by letters patent obtained on petition to the Lieutenant-Governor, by not less than five persons. This Act amends the law by requiring that the aggregate amount of stock taken by the applicants for letters patent must be at least one-half of the total amount of the authorised stock of the company, and that 10 per cent. shall have been paid up thereon. The amount paid must, moreover, be standing to the credit of the company in some chartered bank within the Province.

Additional powers may be granted the company by supplementary letters patent. This is the equivalent of our Companies' (Memorandum of Association Alteration) Act, 1890. Notice of such grant is to be gazetted.

Where capital has been divided into preferred and ordinary shares, the directors may, with the consent of two-thirds of the holders of such preferred shares, cancel them and declare that all the shares shall rank equally.

Fisheries (No. 45).—The Government of Canada gives financial aid to promote the establishment of Fishermen's Bait Associations. This Act supplies a simple and inexpensive mode of incorporating such associations, viz. by twenty or more persons formed for providing bait signing a memorandum of agreement, on which letters patent are granted without fee.

Ill-usage of Servants: Singers and Actors (No. 46).—The penalty for ill-usage of servants by masters, mistresses, or employers is extended to professional singers and actors engaged by the day, week, or month, or by the season.

Marriages: Immunity of Minister (No. 47).—A minister who has performed any marriage ceremony under the authority of a duly issued

licence is not to be liable to damages because of any legal impediment to the marriage if at the time he was not aware of the impediment. The times for the due publication of banns are declared.

Companies (No. 48).—This Act provides for the liquidation of non-commercial joint-stock corporations or companies which have ceased payment.

Evidence (No. 53).—This amends the Civil Code as to husband and wife being examined as witnesses against one another in certain cases.

Seizure of Salaries or Wages (No. 57).—This provides a mode by which a judgment debtor may on deposit of certain amounts and certain declarations made protect himself from having his salary or wages seized by garnishment.

Other small amendments are made in regard to the following :—

Pensions of Public Officers (No. 12); Quebec Licence Law (No. 13); Education Act (Nos. 14 and 15); Succession Duties (No. 20); Forest Fires (No. 21); Fisheries (No. 22); Jurors (Nos. 28 and 54); Building Societies (No. 43).

9. NEWFOUNDLAND.

[*Contributed by* H. C GUTTERIDGE, ESQ.]

Acts passed—18.

French Treaties.—No. 1 continues the Newfoundland French Treaties Act in force until December 31st, 1903.

Seal Fishery.—No. 2 imposes a penalty on the landing of carcasses of seals from steamers or vessels which have not cleared for the seal fishery from a port in the Colony.

Whaling Industry.—No. 3 provides a penalty for the employment in the whaling industry of persons not British subjects domiciled in the Colony for at least two years.

Foreign Enlistment.—No. 4 prohibits the export of certain munitions of war.

Empire Day.—No. 5 establishes an Empire Day (May 24th) in each year, which is to be a Public and Bank Holiday, and also a non-business day.

Crown Lands.—No. 6 authorises the Governor in Council to issue licences of occupation or leases of Crown Lands, lakes, rivers, etc., for the purpose of quarrying, mining, cutting timber, manufacturing paper pulp, driving machinery, etc.

Bounties.—No. 7 empowers the Governor in Council to authorise the payment of bounties on pig iron, puddled iron, bars, and steel billets made in the Colony.

Education.—No. 10 establishes Boards of Education for the Church of England, Roman Catholic, Methodist, Presbyterian, and Congregational

denominations, also Church of England, Presbyterian, Methodist, and Roman Catholic Colleges for higher education. The supreme educational authority is to be a board nominated by the Governor in Council and known as the Higher Council of Education.

Insurance.—No. 11, an Act which is retrospective introduces important changes into the law of life and accident insurance. It defines an "accident" as "any bodily injury occasioned by external force or agency, and either happening without the direct intent of the person injured or happening as the indirect result of his intentional act, such act not amounting to voluntary or negligent exposure to unnecessary danger." The Act further provides that statements made prior to the execution of policies shall be of no effect unless they are material, notwithstanding any proviso to the contrary contained in any policy.

Public Loans.—No. 17 authorises the raising of a loan of $98,000 for the public service of the Colony.

Appropriation.—No. 18 makes an appropriation out of the Consolidated Revenue Fund for the different branches of the public service.

Minor Acts:

Deer.—No. 8 amends the Preservation of Deer Act, 1902.

Beavers.—No. 9 amends 1 Ed. VII., c. 15, by extending the annual period of protection for beavers.

Lotteries.—No. 12 amends No. 75 of the Consolidated Statutes.

Local Affairs.—No. 13 amends the St. Johns Municipal Act, 1902.

Pensions.—No. 14 grants pensions to certain retired officials.

Revenue.—No. 15 amends the Revenue Act, 1901.

Debenture Bonds.—No. 16 authorises the raising of a sum not exceeding $562,208 by debenture bonds of the Colony.

IX. WEST INDIES.

1. THE BAHAMAS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed (1903)—22.[1]

Public Lands in Georgetown (No. 1).—The Georgetown Settlement Revival Act, 1903, revives the Georgetown Settlement Act, 1792, and vests, subject to all lawfully acquired and to possessory rights therein

[1] Acts are passed by the Governor, the Legislative Council, and Assembly of the Bahama Islands, and are numbered consecutively for the regnal year, and no Acts come into operation until official notice appears in the official *Gazette* that the King has not disallowed the same.

recognised, the unallotted portion of land adjoining the harbour of Exuma purchased by the Commissioners of the 1792 Act, in the Surveyor-General of the Colony for the time being with the powers and duties of, and as the successor to, the said Commissioners.

Agriculture (No. 2).—The Fibrous Plant Act, 1903, extends the restrictions on the trade in fibrous plants contained in the Fibrous Plant Acts of 1889 and 1890 to the leaf and fibre of the sisal or other fibrous plant.

Criminal Law (No. 5).—The Amended Magistrates Act, 1903, enables a magistrate to issue an order to the keeper of any prison wherein is confined a person charged with an offence other than that for which he is undergoing imprisonment to produce such prisoner before the magistrate to be dealt with under the charge so made.

Dower (No. 6).—The Assignment of Dower Act, 1903, enables the Supreme Court to appoint commissioners to enter upon lands the subject of dower claim and apportion to the party entitled one full third part of such lands, and put such party in possession thereof.

Foreign Labourers' Protection (No. 8).—The Foreign Labourers' Protection Act, 1903, makes it compulsory under a maximum penalty of £10 on persons engaging labourers to serve in foreign countries to have all agreements signed in the presence of the resident justice, who, before the agreement is signed, shall satisfy himself that the terms thereof are understood by the persons so engaged, and such agreements shall be signed in duplicate and one copy deposited with the justice.

Forestry (No. 11).—The Forest Lands Development Act, 1903, provides legal facilities for the development of the forest lands of the Colony by giving promoters of undertakings for that purpose certain compulsory powers subject to the compensation to the forest owners provided by the Act.

Merchant Seamen (No. 12).—The Merchant Vessels and Seamen Amendment Act, 1903, amends the local Act of 36 Vict., c. 1, by making the provisions for the protection of seamen against being abandoned by the master on the voyage applicable to unregistered vessels, as well as to registered vessels, belonging to the Bahamas.

Religious and other Trusts (No. 14).—The Trustees Appointment Act, 1903, declares that the Imperial Acts known as "The Trustees Appointment Act, 1850 to 1890," are to be in force in the Colony, and provides for the registration of all deeds made under the provisions of the Acts in the office of the Registrar of Records of the Colony.

Employment of Children (No. 15).—This Act prohibits the employment in any capacity whatsoever on board vessels engaged in sponging or fishing within the waters of the Bahama Islands of any child under the age of thirteen.

Wireless Telegraphy (No. 17).—The Wireless Telegraphy Restriction Amendment Act, 1903, extends the restrictions of the principal Act (1902)

to the erection, construction, establishment, or maintenance of any instrument or apparatus for the purpose of transmitting or receiving wireless messages.

NOTE.—The Statute Law of the Bahamas, comprising all Acts of the General Assembly in force from 36 Geo. III., c. 10, to 62 Vict., c. 33, was in 1901 collected and arranged in eight classified orders of subject by the Hon. Sir Ormond Drimmie Malcolm, Chief Justice of the Colony, acting under the authority of his Excellency Sir Gilbert Thomas Carter, K.C.M.G., Governor of the Bahama Islands. The publication, in one volume, is printed by Messrs. Eyre & Spottiswoode.

2. BARBADOS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed (1903)—59.[1]

Manufacturing in Bond (No. 1).—The Trade (Further Amendment) Act, 1902, makes an annual licence from the Treasurer of the Colony necessary for all persons manufacturing goods in bond, and subjects the bonded premises to the inspection of the customs officers.

Telegraphy (No. 2).—The Electric Light and Power (Amendment) Act, 1902, amends the principal Act of 1899 by extending the definition of "telegraph" so as to include besides wires any "other method of communication by means of electric signals," and thereby bringing such other methods under the provisions of the principal Act.

Sales by Court of Chancery (No. 5).—The Chancery (Further Amendment) Act, 1902, amends the like Act of 1898 (1898, No. 24) by enabling the holder of any lien on land ordered to be sold by the Court, and which had remained under the control of the Court for three or more years from the date of the filing of the bill, and for two successive years had failed to pay the cost of cultivation and management, to apply to the master for a sale of the land by public auction without reserve after the expiration of four months from the publication of the official notice of such sale.

Cruelty to Animals (No. 7).—The Cruelty to Animals Act, 1902, repeals the like Acts of 1876 and 1896. It defines "animal" so as to include all kinds, whether quadruped or not, and provides penalties with powers of arrest in cases of cruelty as defined by the Act: it further makes it an offence within the Act to cram or stuff feathered stock intended for sale; to keep, use, or manage any place for the purpose of fighting or baiting any bull, dog, cock, or other animal, whether domestic or wild; to work

[1] Acts are passed by the Governor, Council, and Assembly of the Island, and are numbered consecutively for the calendar year.

any animal unfit to work; to neglect the provision of food and water to animals in confinement. Owners of public vehicles are made liable in certain events for offences by their drivers. Animals shown by evidence to be unfit without cruelty to work may by order of the magistrate be destroyed.

Lunacy (No. 10).—The Lunatics (Amendment) Act, 1903, enables the Court of Chancery by its order to direct the committee of a lunatic so found by inquisition to exercise powers vested in the lunatic for his own benefit, or as trustee or guardian; and in the case of persons incapable of managing their affairs by reason of mental infirmity caused by disease or age, to give to the person named in the order powers to be exercised as the Court shall direct.

Merchant Shipping Fees (No. 13).—The Registrar and Admeasurer of Shipping (Fees) Act, 1903, imposes certain scheduled fees on all ships for duties performed at the port of Bridgetown pursuant to the Imperial Merchant Shipping Act, 1894.

Trespass by Bill-posting (No. 14).—The Petty Trespass (Amendment) Act, 1903, amends the principal Act of 1891 (1891, No. 17) by making it an offence within the Act to post bills upon, or otherwise mark or deface the buildings, walls, fences, trees, etc., of any person without his previous consent in writing: persons employing the bill-posters, or being benefited by the advertisement, to be deemed offenders under the Act.

Colonial Secretary (No. 15).—The Colonial Secretary's Office Act, 1902, constitutes the department of the Colonial Secretary at fixed salaries for the members on the staff and requires all fees paid by the public to be duly accounted for and paid over to the Treasurer of the Island each month.

Registration Office (No. 17).—The Registration Office Act, 1903, constitutes the Registrar's Department at fixed salaries for the staff and requires all fees to be accounted for and paid into the public treasury each month.

The Registrar is to discharge the duties appertaining to the offices of Prothonotary of the Court of Common Pleas, Registrar of the Court of Chancery, Clerk of the Crown and Peace, Clerk of the Court of Ordinary, Clerk of the Court of Error, Notary Public, Registrar of the Colonial Court of Admiralty, of Solicitors and of Joint Stock Companies. The duties, powers, and functions transferred to the Registrar in respect of the records in the Colonial Secretary's office by the Registration Office Act, 1887, by this Act repealed, are to be performed by the Registrar under this Act.

Bankruptcy (No. 19).—The Bankruptcy Amendment Act, 1903, amends the Bankruptcy Act of 1892 by including rates in addition to public taxes as having priority next after Crown debts for payment by the official assignee not exceeding in the whole one year's taxes or rates.

Highways (No. 20).—The Highways (Amendment) Act, 1903, amends the Highways Act of 1900 by making it an offence under that Act to throw

stones or missiles in the public thoroughfares or deposit vegetables or fruit on the sidewalks.

Public Health (No. 21).—The Public Health (Amendment) Act, 1903, is consolidated with the existing Public Health Acts, and contains special provisions with respect to small-pox and vaccination, and is to continue in force until March 31st, 1904.

Medical Registration (No. 24.)—The Medical Registration (Amendment) Act, 1903, amends the Medical Registration Act, 1890, by empowering the Registrar to strike the name of any medical practitioner off the Register upon a conviction of felony or upon deprivation of his qualification by the body which granted it or upon erasure of his name from the British Register by the General Medical Council of England, or upon death or absence from the Island for two years, with power in this last case of restoring the name on the Register upon his return.

Statute Revision (No. 26.)—The Statute Law Revision Act, 1903, repeals, subject to the provisions of this Act, certain scheduled Acts, and provides that where any Act not mentioned in the Schedule has been repealed, confirmed, revived, or perpetuated by any Act by this Act repealed, such repeal; etc. shall not be affected, and also that the repeal by this Act of any Act shall not affect any other Act in which such repealed Act has been incorporated, nor affect the hereditary revenues of the Crown, or the collection thereof; nor the validity of acts done, and any existing status, rights, etc., acquired or accrued; nor the established principles and procedure in law and equity; nor any existing usage, franchise, etc.; nor revive any jurisdiction, etc., not now in force.

Patents (No. 31).—The Patents Act, 1903, repeals the Patents Act of 1883, and, so far as the application for and grant of letters patent for inventions are concerned, adopts, with the necessary variations in form to suit the Colony, the provisions of the Imperial Patents, etc., Act, 1883. The letters patent are to be granted by the Governor in the name and on behalf of the King and under the public seal of the Colony. The provisions of the Imperial Patents Act, 1902, are not adopted.

Cotton, Sale of (No. 32).—This Act makes it penal for persons to sell or buy cotton without a certificate from a public magistrate or a justice of the peace that such person is lawfully entitled to have possession and dispose of a certain quantity of cotton. By a subsequent Act (No. 51, 1903) all machinery and implements for the manufacture of cotton and all the by-products of cotton-seed are made exempt from the payment of any duty.

Plantations, Public Loans to (No. 33).—The Plantations Further-in-Aid Act, 1903, is consolidated with the Plantations-in-Aid Act, 1902, and enables further sums to be borrowed by the Executive Committee on security of the charges on plantations for moneys already advanced by the Government of Barbados under the principal Act and of the balance, if any, remaining out of the Imperial grant in aid of the sugar industry and of the general

revenue and assets of the Colony. The sums so borrowed may be advanced by the Executive Committee to owners of plantations pursuant to the provisions of the principal and of this Act.

Vaccination of Infants (No. 37).—The Infant Vaccination Act, 1903, requires that every child shall be vaccinated within six months after birth and makes regulations and provides penalties to ensure the effective operation of the Act.

Legal Procedure (No. 42).—The Common Pleas (Amendment) Act, 1903, provides as to the issue of writs of summons against defendants residing out of the jurisdiction, whether British subjects or not.

Forestry (No. 44).—The Preservation of Trees Act, 1903, provides bounties on the planting of forest trees and repeals the two previous Preservation of Trees Acts of 1875 and 1901.

Bankruptcy (No. 47).—The Bankruptcy (Amendment) Act, 1903, amends the principal Act of 1892 and makes the provisions of that Act, relating to the remedies against the debtor's property, the priorities of debts, the effect of a composition or scheme of arrangement and of a discharge, and the provisions of this Act binding on the Crown. The Act enables bankruptcy proceedings to be taken by any creditor of a deceased debtor. The operation of the Act is suspended until official notification by public proclamation is made that the King does not disallow the Act, and as to the date of its coming into operation.

Reformatory and Industrial Schools (No. 50).—The Reformatory and Industrial Schools (Amendment) Act, 1903, enables the superintendent of the reformatory after the expiration of eighteen months of the period of detention, with the approval of the Governor in Executive Committee and the consent of the boy, and subject to the provisions in this Act, to apprentice the boy by indenture to labour or service on a British ship or in a British Colony for any period not exceeding three years.

Sugar Bounties (No. 58).—The Bounty-fed Sugar Act, 1903, authorises the Comptroller of Customs to issue certificates of origin for any sugar exported from the Colony to any State party to the Sugar Convention of March 5th, 1902. The Governor in Executive Committee is empowered to prohibit all sugar from any country whose sugar is under prohibition of import into the United Kingdom, and whilst such prohibition is in force certificates of origin must accompany all imports of sugar.

3. BRITISH GUIANA.

[*Contributed by* Sir Thomas Rayner, A.-G.]

During the year 1903 forty-one Ordinances were passed, being one less than in the previous year, in which the largest number of Ordinances were passed in the history of the Colony.

Of the Ordinances passed in 1903, two—No. 19, the East Berbice

Drainage Ordinance, and No. 30, the East Demerara Water Supply Ordinance, 1884, Amendment Ordinance—are in the nature of local or private Ordinances; the rest may be classed as public general Ordinances.

The following are the more important of the public general Ordinances:—

Mining (No. 1).—This consolidates and amends the law with regard to mining for gold and diamonds. Formerly the mining law of the Colony was contained in no less than seven Ordinances. These have all been consolidated with such amendments as were necessary into one Ordinance. In addition to the seven Ordinances referred to, there were also a variety of regulations as to mining made from time to time by the Governor and Court of Policy under statutory authority. These with some amendments have also been consolidated into one set of regulations, called "The Mining Regulations," and have been included in the Ordinance as a schedule, so that in one Ordinance is now contained the whole of the law which governs and regulates the mining industry of this Colony.

Telegraphs (No. 4).—The object of this Ordinance is to vest in the Government the exclusive right of constructing and working telegraphs between the Colony and places outside, with special reference to the development of wireless telegraphy. Power is given to the Governor-in-Council to grant licences to construct and work telegraphs upon such conditions as may be prescribed, and the West India and Panama Telegraph Company, which owns the cable connecting this Colony with the outside world, is exempted from the operation of the Ordinance so far as concerns rights already granted to it.

Judicature: Court Fees (No. 6).—The Magistrates' Courts (Moneys) Ordinance amends the law as to the payment of fees in Magistrates' Courts by requiring them to be paid by means of stamps, instead of in money, and provides for more efficient supervision over the accounts of the clerks of those Courts.

Customs.—Nos. 7 and 8 are the annual Customs Duties and Tax Ordinances, under the authority of which the revenue for the current year is mainly raised. These Ordinances are passed annually, as the Combined Court is averse to granting supplies for more than one year at a time.

Rent (No. 9: The Small Tenements and Rent Recovery Ordinance).—This repeals and re-enacts with amendments an Ordinance of 1846 on the same subject. The amendments are to give additional facilities for recovering the rent of small tenements and for obtaining possession of such tenements held over at the expiration of the tenancy.

Criminal Law (No. 10).—The Indictable Offences (Procedure) Ordinance, 1893, Amendment Ordinance makes a few small amendments in criminal procedure; one enabling the Attorney-General to enter a *nolle prosequi* at

any stage of a criminal case after the committal for trial and before verdict, thus allowing a prisoner against whom there is no case to be discharged as soon as the Attorney-General had decided not to prosecute, instead of having, as formerly, to wait till the next assizes before he could be discharged. Another section provides for the taking of the deposition of a witness too ill to attend at the Magistrate's Court, and enables the deposition to be taken wherever the witness is, although he may not be in the judicial district where the proceedings against the accused person are being held.

Pensions (No. 11).—This Ordinance repeals an Ordinance of 1875, under which pensions were granted to the public officers of this Colony on retirement from the service, and makes other provisions in lieu thereof, under which pensions at a lower rate than those provided in the 1875 Ordinance will be granted on retirement to public officers who entered the service of the Colony after April 1st, 1897. The rights under the repealed Ordinance of public officers who entered the service before April 1st, 1897, are preserved.

Poor Law (No. 12).—This Ordinance repeals an Ordinance of 1855, under which poor relief was given to destitute persons, and makes other provisions for the distribution of such relief. The main object of the new Ordinance is to enable the Government to exercise more control over the distribution of poor relief than was the case under the Ordinance of 1855.

Bastardy (Nos. 13 and 14 : The Bastardy and Maintenance Ordinances).—Provisions as to bastardy and the maintenance of destitute persons by their relatives were contained in the Poor Relief Ordinance of 1855; but on the repeal of that Ordinance the opportunity was taken of bringing the law on these two subjects more into conformity with modern English law, and it was also considered more convenient to deal with them separately from poor relief and from each other. Accordingly these two Ordinances have been passed, which enact what is substantially the English law on these two subjects.

Lunatic Asylums (No. 15).—This is another Ordinance which repeals and re-enacts with amendments a previous Ordinance on the same subject, in this case an Ordinance of 1867. The chief amendments are on the lines of the later English legislation on the subject, and provide more efficient safeguards against improper admission to or detention in a lunatic asylum.

Shipping: Pilotage (No. 16).—Previously to 1903, the pilotage service of the Colony was administered by a body called the Lighthouse and Pilotage Authority, the members of which, though appointed by the Governor in Council, had entire charge and control of the service. In 1903 the Government decided to take over direct charge and control of this service, which was placed under the Harbour Master, and the Ordinance above mentioned

was passed to effect the change, and to make provision for carrying on the service. The Ordinance repeals an Ordinance of 1899 under which the service had been previously carried on, but its chief provisions were re-enacted in the new Ordinance with such amendments as were necessary to adapt them to the new system.

Vaccination (No. 17).—The Passengers' Vaccination Ordinance was passed in consequence of an outbreak of small-pox at Barbados, and is intended to prevent the introduction of small-pox into this Colony by requiring all persons coming from any place where small-pox exists to be vaccinated, unless they can satisfy the Medical Officer of the port that they have recently been vaccinated.

Plant Diseases (No. 21).—This Ordinance has been passed in order to prevent, if possible, the introduction into this Colony of plant diseases, such as that which some years ago did so much damage to the coffee plantations in Ceylon. It enables the Governor in Council on the recommendation of the Board of Agriculture to prohibit the importation of any seeds or plants coming from any country where such plant diseases exist.

Bribery (No. 24).—This Ordinance amends the Criminal Law of the Colony by making it a criminal offence for "public servants" (to which term a wide definition is given, including not only members of the civil service, but military and naval officers, members of the Executive Council, arbitrators, magistrates, and even jurymen) to take bribes, or for any person to take a bribe in order that such a person may influence a public servant in respect of his duties. The Ordinance is taken from the similar provisions contained on the subject in the Indian Penal Code.

Statute Law Revision (No. 26).—The object of this Ordinance is to effect a number of small amendments in the law, and by combining them into one Ordinance to avoid cumbering the statute-book of the Colony with a number of short amending Ordinances. An Ordinance of this character is usually passed each year, and advantage is generally taken of it to make a number of trifling amendments which it would not be worth while to pass an Ordinance for alone. Some of these are mere verbal amendments, and are made in view of the publication of a contemplated new and consolidated edition of the Ordinances of the Colony.

Public Health: Small-pox (No. 28).—This Ordinance was passed when the Colony was recently threatened with a serious outbreak of small-pox, to enable the public health authorities to take measures for preventing the spread of the disease. Power is given to declare infected areas, and persons inside an infected area are forbidden to leave it, except under stringent regulations, so as to guard against infection, and persons living in an infected area can be compelled to be vaccinated or re-vaccinated. In order to prevent the spread of small-pox amongst persons living in the interior of the Colony, particularly the aboriginal Indians, power is given to the health authorities to prohibit persons going from any place in the

Colony where small-pox exists to any place in the interior more than fifteen miles from the sea coast, unless they have been vaccinated. As the provisions of this Ordinance are of a very stringent character, intended only for dealing with a temporary though pressing necessity, the Ordinance is only a temporary one, and it was provided that it should be in force only till December 31st, 1903, and for such further period not exceeding three months at any one time as the Governor in Council may determine. The operation of the Ordinance has been extended till March 31st, 1904, when it is hoped the necessity for its further operation will cease.

Lands and Mines (No. 31).—This Ordinance consolidates and amends two Ordinances under which the Department of Lands and Mines was established. This department is charged with the granting of mining licences and concessions, and with the oversight of mining generally, and also has charge of the Crown lands and forests. The law relating to the mining branch of its functions had already been consolidated and amended by the Mining Ordinance, before referred to, and it was considered desirable to do the same with regard to that branch which relates to the Crown lands (see next Ordinance), and in connection therewith opportunity was taken to consolidate and amend the two Ordinances creating the department, so as to have all the law relating to it in a single Ordinance. This Ordinance contains a few sections dealing with what are called "Colony Lands." A curious distinction obtains in this Colony between Crown and Colony land, by virtue of which the Colony is considered capable of holding land separate and distinct from, and even in opposition to, the Crown. Land which has been bought by the Government out of the public revenue, or which has been acquired by the Government in consequence of its being levied upon for non-payment of money due to the Government, is considered to belong to the Colony, and not to the Crown, and provision is even made in the Crown Lands Ordinance (s. 4) for the Crown to convey land to the Colony, reserving the right of the Crown to the minerals, so that it seems possible for the Colony to own the surface of the land, and the Crown the minerals below it. This curious and somewhat illogical distinction has its origin in the curious constitution of this Colony, under which the power of voting supplies is not possessed by the body which exercises the ordinary legislative functions. The Colony lands, however, are not of very great extent, and it has not been found necessary to pass a special Ordinance to regulate them. They are under the management of the Department of Lands and Mines, and the few sections before referred to give sufficient powers for dealing with them.

Crown Lands (No. 32).—This Ordinance, as stated above, consolidates and amends the law relating to Crown lands, which was formerly contained in seven Ordinances and in numerous regulations made under statutory authority. The whole have been, with amendments, consolidated into one Ordinance, and, as in the case of the Mining Ordinance, the regulations,

called "The Crown Lands Regulations," have been included in the Ordinance as a schedule. The law relating to the important department entrusted with the management and control of the mining industry and of the Crown lands has thus been codified in three Ordinances, one constituting the department and the other two dealing with the two branches of the department's functions.

Foreign Marriages (No. 36).—This Ordinance has been passed to enable persons living in this Colony, but who desire to be married in a foreign country, to give in the Colony the necessary notices under the English Foreign Marriage Act, 1892, and so make the marriage valid under that Act.

Constitution (No. 37).—This Ordinance amends the Ordinance declaring the political constitution of the Colony (No. 1 of 1891) by making the ownership of shares in a company owning land in the Colony a qualification for a seat in the Court of Policy (the Legislature) and for the exercise of the franchise, if the proportionate share of the shareholder in the land of the company would have conferred the qualification if he had been the individual owner of his proportionate share. The reason for the enactment is that a large number of the sugar plantations in this Colony are now owned by joint stock companies, and, as the law stood, the shareholders, however large their holding, were disqualified both from voting for and from being elected to the Legislature.

Balata (No. 40).—This Ordinance was passed to prevent fraudulent dealings with balata, a substance, like rubber, got by "bleeding" certain kinds of trees found in the forests in the interior of the Colony. Licences are granted under the Crown Lands Regulations (see Ordinance No 32 above) to responsible persons to obtain balata in a specified area in the forests, which are all Crown land. The licensees employ labourers to "bleed" the trees and obtain the balata. Complaints have for some time been made that it is not uncommon for these labourers to sell their employer's balata to other persons. As this industry is carried on for the most part in the far interior of the Colony and is spread over a wide area, it is almost impossible for the licensee to exercise any check over the labourers, and there is no doubt that they are fraudulently deprived of large quantities of balata the cost of obtaining which has been paid by them. In order to prevent this and to protect a rising industry of the Colony, this Ordinance has been passed, and it provides that no person can either buy, sell, or export balata without a licence to do so, and no one can have a licence to sell it unless he is the holder of a licence to obtain balata under the Crown Lands Regulations, or has trees which yield balata growing on his land. (These latter are very few.) Persons licensed to buy, sell, or export balata are required to keep books containing a record of their transactions, and it is hoped by these means to make it difficult for dishonest labourers to dispose of their employer's balata, and to afford some means of tracing balata which has been fraudulently disposed of.

Public Officers' Life Insurance (No. 41).—This Ordinance amends an Ordinance passed last year under which all Government officials are required to insure their lives, paying premiums equal to 4 per cent. of their salaries. The amending Ordinance has been passed to enable officials to insure for larger sums than the before-mentioned premiums will secure, and officials who do so will not be required to re-insure on promotion, if the premiums they pay are not less than 4 per cent. of their new salaries.

4. BRITISH HONDURAS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed (1903)—14.[1]

Munitions of War.—Ordinance No. 1 enables the Governor by Royal Proclamation to prohibit the exportation of arms, ammunition, military and naval stores to any country therein named whenever the Governor shall judge such prohibition to be expedient in the interests of his Majesty's naval or military forces or those of his allies engaged in warlike operations.

Savings Bank (No. 4).—The Savings Bank Ordinance, 1903, makes the Public Treasury as theretofore the principal savings bank under the management of the Colonial Treasurer, in whom all existing and future deposits of money are to vest. Deposits may be made (*a*) by persons of full age; (*b*) by married women; (*c*) by children seven years old and upwards; (*d*) on behalf and in the names of children under seven years old; and subject to special provisions (*e*) by two persons jointly on their own behalf; and (*f*) by one person as trustee of another person named in the account; (*g*) and by any body of persons corporate or unincorporate in its own name or in the names of trustees. Deposits must not be less than one dollar or exceed one thousand dollars. The rate of interest is to be 3 per cent. per annum. Provisions are made for the withdrawal of deposits, issuing of regulations, and other matters.

Public Offices (No. 7).—This Ordinance provides that the public offices of the Colony are to be open daily throughout the year except upon Sundays, the birthdays of the Sovereign and Heir to the Throne, Victoria Day (May 24th), St. George's Day (September 10th), New Year's Day, Good Friday, Christmas Day, and other days appointed by the Governor-in-Council to be public holidays.

Town Improvements (No. 9).—The Belize Improvement Ordinance, 1903, gives the District Board certain compulsory powers over owners of land for the purpose of raising the levels thereof within and for the improvement of the town of Belize and its foreshore and harbour.

[1] Ordinances are passed by the Governor with the advice and consent of the Legislative Council, and are numbered consecutively for the calendar year.

Corporal Punishment (No 12).—The Corporal Punishment Ordinance, 1903, repeals like Ordinance No. 12 of 1902, and amends the Consolidated Laws by substituting the regulations contained in this Ordinance for those in the Ordinances repealed and amended. Sentences of corporal punishment may decree flogging with a cat or whipping with light rod or birch either once or twice : the number of strokes in flogging shall not exceed twenty-four, and in whipping shall not exceed six strokes in the case of juvenile offenders under twelve years of age, and twelve strokes in any other case.

Foreign Marriage Act (No. 14).—The Foreign Marriage Ordinance, 1903, makes the Registrar-General of the Colony the marriage officer for notices of marriages so as to give effect to the provisions of the Imperial Foreign Marriage Act of 1892 consolidating the enactments relating to the marriage of British subjects outside the United Kingdom.

5. JAMAICA.

[*Contributed by* ALBERT GRAY, ESQ.]

Laws passed—48.

Lunatics.—Authority is given by No. 4 to convey to and detain in Jamaica persons found to be of unsound mind in the Turk's and Caicos Islands.

Quarantine.—A Law (No. 6) is passed to prevent stevedores and others from boarding vessels before they obtain pratique. The penalty is a fine of not less than £5 nor more than £50. A similar Law was passed for the Bahamas in 1902.

Flogging.—Law 7 regulates sentences of corporal punishment. The enactments of the Law are evidently in pursuance of a general policy, similar Laws having been passed for British Honduras and Trinidad in 1902, and for several Crown Colonies in West Africa.

Fetish.—The modern Acts dealing with "obeah," the form of fetish prevalent in Jamaica, were described in our Review for 1898. No. 8 of 1903 now authorises the resident magistrate to subject a convicted person to the supervision of the police.

Mortgages.—Mortgagees in possession, registered under the Registration of Titles Law of 1888, are by Law (No. 10) authorised to make an agricultural or occupation lease for any term not exceeding twenty-one years, or a building lease not exceeding ninety-nine years. Such lease must be registered within ninety days of its execution.

A mortgagee is also authorised, when he is entitled to sell the mortgaged property, to appoint a receiver.

Real Property.—Law 12 is another measure which will probably go round the Crown Colonies. It provides that when real estate is vested in

any person without a right in any other person to take by survivorship, it shall on his death devolve to and become vested in the personal representatives in like manner as chattels. They are required to transfer it accordingly to the beneficiaries. Subsidiary provisions apply to real estate the Laws relating to probate and administration, and require real estate to be dealt with in the administration of assets, subject to the same liabilities for debts, etc., as if it were personal property.[1]

Indian Immigrants.—The Laws on this subject are amended in a number of particulars (Law 13). An immigrant on completing a continuous residence of ten years may commute his right to a back passage for a grant of ten acres of land. An Indian immigrant is not to be allowed to leave Jamaica for any place, except India, without the leave of the Protector of Immigrants, and masters of vessels are put under penalties accordingly.

Harbour Dues.—Vessels touching at a port in Jamaica solely for the purpose of obtaining medical assistance are not to be liable for harbour dues or fees (Law 17).

Cruelty to Animals.—The more noteworthy section of Law 19 is that which makes it an offence to dock or nick a horse's tail.

Parochial Boards.—Where a Board wishes to carry out any work of public utility, and the proposal is approved by the Governor in Council, the Governor may borrow on the security of the general revenues of the Colony, and lend the sum required to the Board (Law 20). The Board must pay off the loan within thirty years.

Petroleum.—The temperature at which petroleum gives off inflammable vapour is to be tested by the "Abel" testing apparatus (Law 22).

The Governor in Council may also make rules for the keeping and sale of petroleum giving off inflammable vapour at a lower temperature than 95° F.

Resident Magistrates.—The resident magistrate is the fountain of local justice in Jamaica, civil and criminal. It is thus very desirable that the Laws prescribing his jurisdiction should be clear and orderly. By Law 28 eleven Laws dating back to 1887 are amended and consolidated, making up a Law of more than three hundred sections.

On the civil side a resident magistrate has jurisdiction up to £50, and apparently unlimited jurisdiction by consent of parties. In probate and administration, the magistrate can act where the estate does not exceed £300.

On the criminal side the jurisdiction is limited by reference to the Consolidation Acts of 1861, as applied to Jamaica, and punishments are restricted to one year's imprisonment and fine of £50.

Administration.—It seems that a custom has prevailed in Jamaica for executors to take a commission of 6 per cent. on the amount of the personal estate administered and on the proceeds of realty sold. This custom having

[1] A similar Law was passed for Trinidad in 1902. See Journal, N.S., No. XII. p. 443.

been held bad under 24 Geo. II., c. 19, a Law (No. 29) is passed to authorise the retention of the commission taken by executors before July 14th, 1902.

Casual Revenues.—Law 30 enables the Governor to make grants "on equitable or moral grounds" out of property coming to the Crown by lapse or escheat.

Produce Protection.—Considerable difficulties have been experienced in tropical colonies in connection with the theft of agricultural produce, and different expedients have been adopted to meet the evil. In Jamaica all persons buying or selling any of the produce mentioned in the schedule (coffee, cocoa, nutmegs, ginger, etc.) must take out a licence. Exceptions are made for persons purchasing for domestic consumption and growers in respect of their own produce. The grant of licences is somewhat strictly hedged in by requirements, and appropriate penalties are assigned for buying or selling without licences.

Registration of Deaths.—Where a coroner's inquest is held, the finding of the jury (if any) is to be sent to the registrar of deaths, and to be inserted on his registration form book (Law 33).

Similarly, when some person is charged with causing a death, and the resident magistrate accordingly holds a magisterial enquiry, instead of an inquest, the finding of the Court or jury is to be sent to the registrar.

Marine Board.—The Laws for the constitution and powers of the Marine Board, passed in 1896, 1897, and 1898, are consolidated and amended by Law 36. The Board holds courts of survey, grants sea-going certificates, examines masters and mates, etc., for certificates of competency (with power to suspend, etc.), and has the usual powers over pilots.

Stamp Duties.—A useful Law (No. 40) is substituted for some sixteen Laws dating back to 1886, and comprises in a schedule the existing stamp duties.

Sugar.—Certain Laws prohibiting the importation of sugar, rum, and molasses are repealed (Law 43).

Law 45 provides for the application of the £10,000 granted by the Imperial Parliament for the promotion of the sugar industry. An experimental station is to be started where chemical experiments are to be made, and scientific instruction in sugar cultivation is to be given.

6. TURK'S AND CAICOS ISLANDS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—8.[1]

Wireless Telegraphy (No. 2).—The Wireless Telegraphy Ordinance, 1903, forbids any system of wireless telegraphy without the previous licence of the Governor-in-Chief, who may prescribe the conditions of the licence.

[1] Ordinances are made by the Legislative Board of the Turk's and Caicos Islands, and require the assent of the Administrator of the Government or of the Governor-in-Chief, the Governor of Jamaica.

Juries (No. 3).—The Jury (Amendment) Ordinance, 1903, exempts the superintendents and staffs of any cable companies from serving on juries and otherwise amends a like Ordinance of 1897, with which it is incorporated.

Judicature (No. 5).—The Supreme Court Ordinance, 1903, reconstitutes the Supreme Court of the Turk's and Caicos Islands, and declares its jurisdiction, powers, and authorities within the dependency to be the same as those vested in the following Courts in England, viz. the King's Bench, the Chancery, and the Probate, Divorce, and Admiralty Divisions of the High Court of Justice, and the Courts of Oyer and Terminer and General Gaol Delivery. The Supreme Court is also to retain all the jurisdiction, powers, and authorities heretofore exercised. Law and equity are to be administered concurrently, and where they conflict the rules of equity are to prevail.

Civil Procedure (No. 6).—The Civil Procedure Ordinance, 1903, provides a complete system of procedure applicable to all civil proceedings in the Supreme Court of the Colony under the following headings: Writ of Summons and Service; Joinder of Causes of Action; Parties; Special Defence; Discontinuance, Confession and Payment into Court; Interlocutory and Interim Orders; Receiver; Arbitration; Discovery; Injunction and Mandamus; Witnesses; Trial; Judgment and Execution; Actions by or against the Government; Arrest of Defendants; Fees and Costs.

The schedule to the Ordinance gives forms of writs and warrants, etc.

Criminal Procedure (No. 7).—The Criminal Procedure Ordinance, 1903, consolidates and amends the procedure applicable to the trial of criminal cases in the Supreme Court of the Colony under the following headings: Proceedings preliminary to Trial; Trial; Miscellaneous Provisions.

The schedule gives forms of indictment.

7. TRINIDAD AND TOBAGO.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed (1903)—16.[1]

Education (No. 1).—The Education (Scholarships) Ordinance, 1903, provides as from January 1st, 1904, a grant of three exhibitions of £600 each to students of the Royal College who should pass the prescribed examination of the Council of the College for the maintenance of such students during their stay at some University.

Cattle Disease (Nos. 2 and 3).—The Contagious Diseases (Animals) Ordinance, 1902, gives power to the Governor-in-Council by an Order in

[1] Ordinances are made by the Governor with the advice and consent of the Legislative Council, and private and public Ordinances are numbered consecutively for the current year.

Council to declare any area within the Colony to be affected with disease, and thereupon in respect of such area and cattle therefrom the regulations for the purpose of preventing the spread of disease contained in the Ordinance are to come into operation, and persons committing any acts contrary to such regulations are made liable to fines or imprisonment.

The Animals Importation Ordinance, 1902, provides regulations for the inspection of all imported animals by a public examiner appointed by the Governor, and the issue by the examiner of certificates of exemption from disease of animals on importation, and gives powers of detention of animals in the event of suspicion and for their destruction if disease is certified.

Vaccination (No. 4).—The Tobago Vaccination Ordinance, 1903, repeals some existing Tobago Ordinances and declares that the Trinidad Ordinances (Nos. 23 of 1872 and of 20 1900) shall extend to and be in force in Tobago from April 1st, 1903.

Post Office (No. 6).—The Post Office Ordinance, 1903, provides for the issue of postal orders payable within the Colony.

Education, Elementary (No. 8).—The Education Ordinance, 1903, amends existing Ordinance (17 of 1890) in respect of assisted schools and declares that the property and control of the schools shall be vested in trustees as the local managers, with power to appoint and dismiss teachers, subject in the case of appointment to the control on educational grounds of the Inspector of Schools.

Telephones (No. 10).—The Commercial Telephone Company, Limited, Ordinance, 1903, regulates the use of the public streets and roads for the purpose of erecting, establishing, and maintaining the telephone system in the Colony, and vests in the company certain powers in relation thereto. The company is bound to provide on the issue of an order by the Governor in Council separate lines for the public service of the Colony.

Wireless Telegraphy (No. 11).—The Wireless Telegraphy Ordinance, 1903, prohibits wireless telegraphy in the Colony without the licence of the Governor and upon such terms as he may prescribe.

Juries (No. 12).—The Jury (Explanation) Ordinance, 1903, is consolidated with the Jury Ordinances of 1884 and 1901, and declares that it is lawful for the Registrar of the Supreme Court, subject to the direction of the Chief Justice or of a judge of the Court, to divide the panel of jurors returned by the Marshal into so many panels as there may be Courts sitting for the trial of cases at the Criminal Sessions in Port-of-Spain. But no party to any cause tried at any jury sessions shall be deprived of his right to have the jury selected from the entire panel or from the remaining number, after omitting the names of jurors actually serving or discharged from attendance by the judge.

Bank Notes (No. 14).—The Bank Notes Ordinance, 1903, makes it illegal for any banker to issue bank notes in the Colony otherwise than subject to and in accordance with the provisions of the Ordinance.

The conditions of issue by any banker are (*a*) notification to the Colonial Secretary of the amount in value and the denomination in currency of the notes to be issued, and (*b*) the deposit to a fund, to be called "The Bank Note Reserve Fund," of coin being legal tender or partly of coin and partly of securities authorised by the Imperial Trustee Act, 1893, and equal to not less than the amount of the notes issued or in circulation. The issue of the notes is subject to the limits and general regulations and penal provisions contained in the Ordinance.

Immigration (No. 15).—This Ordinance imposes export duties on sugar, molasses, rum, cocoa, coffee, coconuts, and copra produced or manufactured in the Colony, and makes the moneys so raised solely applicable in aid of immigration.

Currency: Government Notes (No. 16).—The Government Currency Notes Ordinance, 1903, establishes a Board of Commissioners of Currency, consisting of the Colonial Secretary and the Receiver-General and one other person to be nominated by the Governor not holding salaried office under the Crown, and authorises the issue from time to time by the Board, subject to the provisions of the Ordinance, of currency notes in exchange for current gold and silver or for notes previously issued pursuant to the Ordinance, and the current gold or silver coin so received is to form and be held by the Commissioner in the Colony as the Note Guarantee Fund.

8. BERMUDA.

[*Contributed by the* Hon. Reginald Gray, *Attorney-General.*]

Acts passed—16.

After the abnormal legislative activity in 1902 it was natural to expect a comparatively unproductive Session in 1903, and the number of Acts passed was the smallest for many years.

Wireless Telegraphy (No. 2).—This Act prohibits the transmission or receipt of messages across the seas by means of wireless telegraphy, or the installation of apparatus for the purpose except by persons licensed by the Governor. Licences may be revoked, and power of search is given on suspicion of the violation of the Act.

Corporal Punishment (No. 3).—This is believed to be the most recent colonial enactment on this subject, and contains an important provision designed to prevent the imprisonment of boys under twelve.

The Act provides in substance that, whenever any male under sixteen is convicted of an offence for which he would be liable to imprisonment, the Court may, either in addition to, or instead of, passing a sentence of imprisonment, sentence the offender to be once privately whipped. But whenever any male under twelve is convicted for such an offence, and

any parent, relative, or friend of his shall pay such fine as the Court shall consider proper, or, in the event of the offence having occasioned loss or damage to any person, shall make good such damage or such part thereof as the Court shall consider reasonable, the Court may discharge the offender without punishment. In the absence of a reformatory or any other analogous institution it often became difficult to deal with youthful offenders.

Public Officers' Bonds (No. 11)—Prior to the passing of this Act the only form of security permitted to be given by public officers was a bond with two sureties. This Act permits as an alternative the giving of a bond by a guarantee company approved by the Secretary of State for the Colonies.

Victoria Memorial (No. 12).—This Act provides for the erection of a new public library and museum to be called "The Victoria Memorial," in commemoration of the happy and illustrious reign of her late Majesty Queen Victoria.

Fire and Marine Insurance (No. 16).—For many years the business of fire and marine insurance here has been in the hands of the local agents of companies incorporated in England, Canada, and the United States. This Act incorporates a local company with full power to transact all business of this nature.

9. WINDWARD ISLANDS.

[*Contributed by* ALEXANDER MANSON, ESQ.]

(i) GRENADA.

Ordinances passed—9.

Medical Officers (No. 1).—The Governor is empowered by this Ordinance to appoint a staff of medical officers for the Colony to afford medical aid to all paupers, labourer's children under ten, to all labourers over sixty, and to any destitute woman in child-birth, to vaccinate (at 1*s.* a head), to give evidence on inquests, to inspect towns and villages and report on the sanitation.

All medicines required are to be supplied at Government dispensaries.

Volunteer Reserve Force (No. 4).—This Ordinance provides for the constitution of a Volunteer Reserve Force.

Each member is to take an oath of allegiance. Arms are to be supplied and remain the property of the Government. An annual inspection is to be held, the test of efficiency to be fixed by the Governor.

The Governor may by proclamation in case of invasion, insurrection, or other emergency cause any members of the reserve to be enrolled as a corps of the volunteer force of the Colony. Selling or pawning any

arms or clothing of the corps is punishable on summary conviction. Damaging targets or obstructing drill is punishable with a fine.

Wireless Telegraphy (No. 7).—This Ordinance reserves to the Governor in Council the exclusive privilege of installing and using apparatus intended for wireless telegraphy.

Foreign Marriages (No. 8).—This Ordinance is to give effect in the Colony to the Foreign Marriages Order in Council, 1903. Any person residing in the Colony and intending to enter into bonds of matrimony to be solemnised in any foreign country under the Foreign Marriage Act, 1892, and the above Order in Council is to give notice in writing, in a prescribed form, to the Registrar of the district of his or her intention, and the notice is to be entered in the Marriage Notice Book, and after seven days the Registrar is to give a certificate, unless he is aware of an impediment, that the notice has been duly published. An alternative procedure of an analogous kind to the preceding is provided, by notice to the minister of the congregation of which the intending spouse is a member, followed by publication and entry of banns.

Public Bathing (No. 9).—This authorises the Governor in Council to make rules for the regulation of public bathing places on the coast line of the Colony. Disobedience to such regulations is punishable by a fine of £10.

(ii) ST. LUCIA.

14 Ordinances, besides Orders in Council and Regulations.

Commissions of Enquiry.—No. 1 empowers the Governor to issue a Commission whenever he thinks proper for enquiring into any matter of public importance, to appoint a secretary to such Commission, and give directions how, when, and where the enquiry is to be made. Such Commission is to have the powers of the Royal Court in summoning and hearing witnesses and compelling the production of evidence.

Supply.—No. 2 and 3 are Appropriation Ordinances.

Petroleum.—No. 5 gives the duty of issuing licences to the Treasurer instead of to magistrates.

Public Medical Officers (No. 7).—This Ordinance is a counterpart of No. 1 of Grenada.

Tariff Customs (No. 9).—S. 4 give the Governor discretionary powers in altering the duties, subject to approval by the Legislative Council, and subject to disallowance by the Secretary of State for the Colonies.

District Courts.—No. 10 provides for the appointment of assistant magistrates when needed, and makes some minor changes in the law.

Wireless Telegraphy (No. 12).—This Ordinance forbids the use or installation of apparatus for wireless telegraphy, and empowers the Governor in Council to have any such apparatus dismounted.

Government Savings Bank (No. 14).—The limit of £200 is fixed, and deposits must be not less than one shilling and must be in multiples of a shilling. By s. 11 the Governor in Council is authorised to invest the money, and the interest is made a charge on the public funds.

Interest is to cease on any depositor's account when nothing has been paid in or drawn out for the space of six years; and after twelve years an unclaimed deposit is forfeited, subject to a power of refund by order of the Governor in Council when sufficient cause is shown.

(iii) ST. VINCENT.

11 Ordinances.

Supply.—Nos 1 and 5 are Appropriation Ordinances.

Education (No. 2).—This repeals the law of 1893: the new provisions are contained in nineteen sections. SS. 3 to 11 constitute a Board of Education of not less than four members. The Governor is to be *ex officio* President, and he appoints the other members annually, and also an Inspector of Schools, and such education officers as may be found necessary.

SS. 12 and 13: The Legislative Council of the Colony is to appropriate money by an annual grant for education, and the Board is to administer this grant, and to draft a code of regulations.

S. 14 classifies schools under three heads:

i. *Government Schools*—namely, those held in buildings owned or rented by the Government, and paid for entirely from public money. In these religious instruction is not provided by the Board, but ministers of each denomination to which scholars belong can have access by arrangement to teach such scholars. For these schools the managers are appointed by the Governor.

ii. *Denominational Schools*—namely, those approved by the Board which are held in buildings controlled by local managers, but where the teaching is paid for from the annual education grant.

iii. *Aided Schools*—namely, those established and maintained by local managers, but receiving a contribution from the Board. In schools of these last two classes nothing in the law interferes with the question of religious teaching.

S. 16 leaves it in the discretion of the Board to approve schools, and to allot or withdraw their grants, under heads ii. and iii.; and also to spend money from the annual grant for assisting education in other ways. The science of Agriculture is one of the matters which they will help to encourage.

Flogging: Punishment.—No. 4 limits the punishment to twenty-four strokes for adults, and to twelve strokes for juvenile offenders of the male

sex. The flogging is only to be with such instrument as has been approved by the Governor.

Medical Registration (No. 6).—This substitutes a new section for s. 36 of the law of 1886, and imposes a penalty of £20 for the unauthorised use of a professional title. There are two other small amendments.

Customs Duties.—No. 10 enhances the previous tariff by one-tenth.

10. THE LEEWARD ISLANDS.

[*Contributed by* ALEXANDER MANSON, ESQ.]

ACTS OF THE GENERAL COUNCIL OF THE COLONY.

Acts passed—10.

Wrecks: Enquiry.—No. 1 merely amends Act 9 of 1876 (Enquiries into Wrecks) by substituting "*may*" for "*shall without delay*" in s. 1.

Officials, T. A.—No. 3 regulates the allowances to officials for travelling expenses.

Council: Constitution.—No. 4 provides for the number of official members being maintained at eight.

Medical Qualifications of Practitioner (No. 5.)—Qualification of medical, surgical and dentist practitioners, and the sale of medicines.

There are twelve sections.

SS. 3 and 4 provide that no person shall practise medicine or surgery in the Colony unless he could prove on a trial in Court that he would be entitled, under the law for the time being in force in the United Kingdom, to practise, and demand and sue for his charges.

SS. 5 and 6 make the qualification for vendors of medicine to be either that they are entitled under the law for the time being in force in the United Kingdom to compound, dispense, or sell medicines by retail, or that they be specially licensed in the Colony on a certificate of fitness. Salts, senna, and castor oil and patent medicines are excepted; and qualified medical practitioners are not debarred from compounding, dispensing, and selling medicines.

S. 7 provides a penalty, £100 fine.

S. 8 forbids under penalty of £50 the use of the title "dentist" (or other title implying that he is qualified to practise) unless the practitioner can show that he holds a qualification (*a*) in some part of the British dominions; (*b*) in a foreign country which is deemed by the Governor sufficient; or (*c*) that he has been certified after examination in the Colony as fit to practise. Medical practitioners are not debarred from dentistry by this section. Several Ordinances dealing with the subject in the different islands are repeated.

Procedure: Payment of Jurors (No. 6).—For the payment of jurors in civil cases; the Act comprises four simple rules of procedure.

Procedure: Summary Trial.—No. 7 repeals s. 45 of Act 11 of 1891 relating to certain offences triable summarily.

Supply.—Nos. 8 and 9 are Acts to provide for the services of the Colony.

Supreme Court.—No. 10 amends the Act of 1880 and repeals No. 5 of 1902. The first thirteen sections concern the appointment of judges and constitution of Courts and circuits and sittings of the full Court.

SS. 14 to 19 relate to the hearing of appeals. Other provisions are about the registrars, urgent applications during the vacation, and the framing of rules in respect of them.

(i) ANTIGUA.

Ordinances passed—14.

Barbuda Administration.—No. 4 amends the Ordinance of 1901 for the management and taxation of the Island of Barbuda in one or two small particulars.

Council: Constitution.—No. 6 amends the Constitution Ordinance of 1899 to secure that the full number of eight official members of the Council shall be maintained when one person holds two of the *ex-officio* seats.

Mongoose: Import Banned.—No. 7 prohibits the introduction of the "mongoose" into Barbuda under penalties of six months' imprisonment or £100 fine.

Defence Force (No. 8, consolidating and amending the Defence Force Acts).—Acts 2 and 13 of 1897 are both repealed. SS. 1 to 33 deal with voluntary enlistment and discipline, liability to actual service, and so on. SS. 34 to 39 enable the Governor to call out all male persons over eighteen and under forty-five, in case the Defence Force be below minimum strength. Schedule E contains exemptions from this liability to compulsory service; and s. 36, clause 2, provides for those unwilling to serve buying a discharge. The number required in each year are balloted for and serve for twelve months.

SS. 40 to 50 contain miscellaneous provisions, none of them needing notice.

Taxation: Sugar Duties.—No. 9 levies duties on sugar and sugared articles from September 1st, 1903; but this Ordinance is repealed by No. 14 below.

No. 10 is a money grant for the service of the Presidency.

Wireless Telegraphy.—No. 12 is to regulate wireless telegraphy. No installation is permitted except with the Governor's licence, and illicit apparatus is liable to forfeiture. Penalties are provided: six months' imprisonment or fine of £100.

Taxation: Excise (No. 13).—The Presidency is to be divided into districts and the necessary officers appointed. All stills are to be registered and licensed, with fixed limit of capacity, and power to refuse licence to new stills not of modern type. There are usual provisions for supervision and control, storage of spirits under lock and key, and the keeping of stock-books; also for visiting the distillery and testing the spirits; for regulating the removal of spirits; exportation, warehousing, etc.; and procedure and penalties. Offences are made triable summarily, and the Governor in Council is empowered to make rules.

(ii) DOMINICA.

Ordinances passed—10.

Supply.—No. 1 and No. 2.

Shipping.—No. 4 repeals Act 3 of 1880, and provides for restricting the coasting trade in goods and carriage of passengers to British vessels and vessels of such foreign States as have the privilege by treaty. Under ss. 5 and 6 the Treasurer has a discretion in permitting vessels of the above-mentioned category to engage in this trade, and to appoint a revenue officer to accompany each.

Defence Force.—No. 5 is an Ordinance to provide for a Defence Force.

Reserve Defence Force.—No. 6, to provide for the formation of a Defence Reserve. These are on the same lines as No. 8 of Antigua noticed above.

Tariff: Sugar Duties.—No. 8 reduces the rate of duty on import of sugar and goods containing sugar.

Wireless Telegraphy.—No. 9 renders it penal to instal wireless telegraphy, except with the Governor's permission, and makes apparatus liable to forfeiture.

Tariff: Wharfage Dues.—No. 10 exempts from import duty, and in some cases also from wharfage dues, certain classes of goods, such as scientific instruments for the Observatory, official stores and tools and material for public works, and also machinery, etc., needed for vessels engaged in the coasting trade.

(iii) MONTSERRAT.

Ordinances passed—**11.**

Forestry (No. 2).—This is to set up a Board for the purpose of checking the destruction of timber, and to further the replanting of lands. There are seventeen sections. The Board is empowered to bring any plantation property on lands on which timber grows within its operation, subject to appeal to the Governor in Executive Council. "Timber" is defined to include "any kind

of tree, wood, underwood, furse, or bush." By s. 10, clause (*d*), the Board has power "to prescribe an Arbor day or days"; and areas to be planted on such days; by whom to be planted; and with what kind of trees.

The penalty for all sins against the law (or by-laws) by omission or commission is generally £20.

(Cf. Ordinance No. 10 of St. Christopher and Nevis below.)

Nos. 4 and 7 are for supply of money.

Defence Force (Nos. 5 and 6).—These new Ordinances are on the same lines as No. 8 of Antigua noticed above.

Wireless Telegraphy (No. 8).—Corresponds to the similar Ordinances noticed above, putting the control of all wireless telegraphy in the hands of the General Government of the Leeward Islands.

(iv) ST. CHRISTOPHER AND NEVIS.

Ordinances passed—13.

Smuggling.—No. 2 amends the law of 1902 (Trade and Revenue) giving powers to the Treasurer and Assistant Treasurer to delegate their authority for search, etc., under ss. 103 and 104 of the principal Ordinance.

Defence Force.—No. 4 is on the same lines as No. 8 of Antigua and of Montserrat above.

Defence Reserve (No. 5).—Similar to No. 6 of Dominica mentioned above.

Wireless Telegraphy.—No. 9 corresponds to No. 8 of Montserrat and similar Ordinances in other Presidencies of the Colony, to give control of all wireless telegraphy to the General Government.

Forestry (No. 10: twenty-four sections).—This is a somewhat similar Ordinance to No. 2 of Montserrat above noticed. Part II. brings all "timber" within the Presidency under the control of the Forestry Board. "Timber" is defined as any kind of growing tree except brushwood or trees growing below the existing line of cultivation. Part III. gives power to the Legislative Council to bring any estate under the re-forestation sections of the law—briefly, to compel the owner to plant trees in accordance with a scheme made by the Board (after opportunity for objection); the Treasury is to repay the owner his expenses.

Tariff (No. 11).—Eight previous Ordinances are repealed and part also of No. 10 of 1902; and a new Tariff is ordained.

(v) THE VIRGIN ISLANDS.

Ordinances passed—6.

Sanitary: Prohibiting Imports (No. 1).—Power is given to the Governor and Executive Council to prohibit importation from places outside the Presidency where contagious disease is rife.

Sugar Duties.—No. 3 reduces import duties on sugar and sugared goods.

Wireless Telegraphy.—No. 5 is a similar measure to those in the other Presidencies of the Colony above noticed.

Horses, Cattle, and other Animals.—No. 6 gives power to the Governor by Order in Council to forbid importation from places outside the Presidency and to regulate and control such importation, and also the transportation of the animals referred to from one island to another within the jurisdiction.

X. MEDITERRANEAN COLONIES.

[*Contributed by* ALBERT GRAY, ESQ. K.C.]

1. CYPRUS.

Laws passed—5.

Interpretation.—A short Ordinance amends in certain points the Interpretation Law of 1901. One amendment substitutes in the principal law the word "unincorporate" for "incorporate." The unwary draftsman is apt to define "person" as including "body of persons, corporate or incorporate." The latter word, as a reference to Murray's Dictionary will show, is not the negative of "corporate," as applied to public bodies, although it erroneously so appears in one edition of Webster's Dictionary.

Public Loans.—By the Public Loans Law, 1897, the limit of interest to be paid on public loans was 5 per cent. It is now found necessary to raise it to 7 per cent. (No. 3). The Law also enables the Loan Commissioners to take instalments of interest in kind, where the loan is for cultivation or manufacture.

2. GIBRALTAR.

Ordinances passed—7.

Intoxicating Liquor.—A short Ordinance (No. 5) enacts for Gibraltar some of the recent amendments of the law made in England. The burden of proof is cast upon the licensee in case of drunkenness on his premises; penalties are assigned for procuring drink for drunken persons, for being drunk while in charge of a child, for delivering liquor to children under fourteen, and for sale of liquor to habitual drunkards.

The other Ordinances are of merely local interest.

3. MALTA.

Ordinances passed—14.

None of these Ordinances calls for special comment in this Review. Four of them are exemptions from a local mortmain law. The others are Appropriation Acts and amendments in small particulars of existing legislation.

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NOTES.

The Society and Imperial Co-operation.—The Society's field is so wide and varied that it cannot be covered without a large amount of co-operation. The editors therefore note with peculiar pleasure the growing interest in the work of the Society and the generous help given to it. From all parts of the Empire the Society now receives valuable contributions. Admirable summaries of the legislation of the year have come from Victoria by Mr. C. J. Zicky-Womarski and Professor W. Harrison Moore; from Cape Colony by the Attorney-General; from New South Wales by the Parliamentary Draftsman of the State; from British Guiana by Sir Thomas Rayner, the Attorney-General; from Bermuda by the Hon. Reginald Gray, Attorney-General; from Grenada by the Chief Justice, Sir. C. J. Tarring; and from the Bahamas by the Chief Justice, Sir O. D. Malcolm and Mr. Harcourt Malcolm. Summaries furnished by distinguished experts such as these have a special value, because they explain the circumstances out of which the legislation arose, the influences which moulded it, and the objects at which it is aimed.

Reports of much interest have also been received from the local branches of the Society. Extracts from some of them will be found in the Notes; *e.g.* the report from the Gold Coast by the Chief Justice, Sir W. Brandford Griffith, and from Northern Nigeria by the late Chief Justice, the Hon. H. C. Gollan. The report from Seychelles by Sir G. B. Sweet-Escott and Judge Herchenroder shows the progress made during the last four years in consolidating and codifying the laws of those islands.

Reports of judicial decisions of importance have also been received from Sir Thomas Rayner (British Guiana) and from Grenada, from the Gold Coast Branch, then under the Presidency of Mr. Justice Francis Smith, and a judgment of special interest on contraband by Sir H. S. Berkeley, late acting Chief Justice of Hong-Kong. Copies of regular Law Reports have also been received from New South Wales, from Quebec, from Natal, from Canada (Exchequer Reports), Jamaica, and elsewhere. The New York State Library sends its invaluable Year Book of Legislation, and to these may be added many important volumes embodying legislative consolidation and revisions, the laws of the Bahamas, the laws of St. Lucia, the laws of the State of New York, the laws of the Colony of British Honduras.

The Governments of the Transvaal and the Orange River Colony have approved a subscription of £10 10*s.* each to the Society, and Rhodesia has given £5 5*s.*

All this is encouraging; and for these marks of interest in the work of the Society the Editors tender, on its behalf, their cordial thanks.

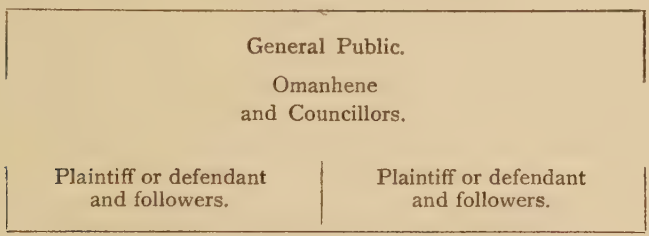
The Native Courts of the Gold Coast.—The report of the Gold Coast Local Committee of the Society (W. Brandford Griffith, C. J., A. Willoughby Osborne, and T. Hutton Mills) contains the following interesting account of the procedure in the native Courts—furnished by His Honour the Chief Justice:—

"Legal proceedings in a native Court are instituted by swearing an oath, by putting palm-leaves (in the case of trespass) on the land, or by applying to the Omanhene[1] to summon the other party. The usual practice nowadays, in imitation of the English Courts, is to apply to the Omanhene to summon the other side, and I will deal first with this form of procedure. The following remarks apply specially to the Court of the Omanhene of Akwapim, but the procedure in other native Courts only differs in details.

"*Procedure by Summons.*—To issue a summons the applicant brings 16*s.* to an attendant of the Omanhene, who takes him to the latter, and the money is then paid to the Omanhene or his attendant. The applicant tells the Omanhene whom he wishes to summon and the cause of complaint. The Omanhene then calls an attendant, who acts as a bailiff, and giving him 4*s.* out of the summons fee, sends him for the defendant. The applicant ordinarily remains at Akropong, the Omanhene's town, but if the defendant is unknown he sends some one with the bailiff, or may even go himself, to point out the defendant. It is understood that the defendant should come forthwith, but if he is unable to come he fixes a date when he will attend in answer to the summons.

"As soon as the defendant arrives the bailiff reports to the Omanhene, and a drum, kept specially for the purpose, is beaten, announcing to the Councillors that there is a case for trial. The Councillors at once proceed to the Omanhene's quarters.

"The Court is built as follows:—



"The number of Councillors is not fixed. Four or five with a linguist would suffice for a small case, but in an important case there would be more Councillors and more linguists. The Omanhene sits in the middle and

[1] "Omanhene" means the paramount or head chief of a tribe, one who is subject to no other chief, formerly called "King."

next to him on either side are his linguists. The Ankobia Councillors, viz. those who are always with the Omanhene, sit on the left, after the linguists. On the right are the Mankralo and some of the Councillors under him.

"The proceedings begin by a linguist rising and asking the plaintiff if he had seen amongst the crowd the party whom he had summoned. If he says 'Yes,' he is asked the name of the defendant, who is called. The linguist then asks the plaintiff who is his surety. Plaintiff gives his name, and the linguist calls him, and when he comes forward says, 'C.D. (calling surety's name), A.B. (calling plaintiff's name) has proposed you as his surety. Are you willing to become his surety?' If he says 'Yes' the linguist says, 'Swear the Omanhene's oath "Wukuda."' The surety then comes to the front before the assembled Councillors and says, 'I swear "Wukuda" that I will be a surety for A.B., and if judgment is given against him I will bear the burden of the suit.' The plaintiff and his surety and friends then go to their station at one end of the Court. Defendant is then asked for his surety and gives the name of some one who is similarly called and sworn, and then defendant and his surety and friends move to their station. If a surety is not forthcoming, one is sent for whilst the Councillors wait, unless the surety has to be brought from a distance; for the Court will not proceed to try a case unless a surety is 'behind' each party.

"The plaintiff then comes forward and takes the linguist's staff and swears 'Wukuda' adding, 'If I do not speak the truth may the fetish (referring to his fetish or one which the linguist mentions) kill me.' He then makes his statement, mentioning his witnesses. The defendant is asked to come forward and question him, and the Councillors and Omanhene question him through one of his linguists.[1] Sometimes the defendant then gives his statement and is questioned, but sometimes, following the English Courts, he is merely asked for his witnesses, his evidence being taken after the plaintiff's witnesses have been heard.

"The witnesses are never ready to hand; they purposely keep away and only come when summoned; indeed, they often leave the town so as to be sent after. The idea is that they have no knowledge that they will be required to give evidence and are so very disinterested that they take no interest whatever in their principal or his case. This explains why native litigants so often appear before the British Courts without their witnesses and then apply for an adjournment to issue subpœnas.

"After the plaintiff has been heard the case is adjourned for the witnesses. Great pains are taken that the witnesses are not tampered with. Sometimes the Councillors are summoned at night if a witness arrives at a late hour; sometimes the bailiff who brought them sleeps with them, and then at an early hour, before six, the drums beat and the Councillors

[1] The Court is supposed to say nothing directly to the parties. Everything from the Court ought to pass through one of the Omanhene's linguists.

reassemble. The same Councillors should sit on the resumed hearing, but others may join them. The witnesses when brought to the Court are kept away from the other people and are called one by one and make their statements before the Court, first taking the linguist's staff and swearing Wukuda. Notes of the evidence are taken by the Omanhene's clerk, usually in English.

"It is a point of etiquette in court that any gesticulation must be made with the right hand only. To gesticulate with the left is an affront to the Court; indeed, it would be held improper to do so in the presence of any elder.

"After all the evidence has been given the Councillors deliberate, the linguists joining in the deliberation, but not the Omanhene. As soon as they have arrived at their verdict a linguist rises and says, 'Well, we have seen .....(what plaintiff has said) and we have seen..... (what defendant has said) and we have seen.....(what witnesses have said) and we think that.....is guilty' (or not guilty).

"Frequently, however, and invariably in an important case, the Councillors retire. In such a case the Omanhene himself sums up what both sides say and adds that the Councillors may go and deliberate. The Councillors then go outside the Court and consider the verdict.[1] On their return one of the linguists with the Councillors tells one of the linguists who has remained with the Omanhene the result, but loud enough for all to hear. The latter linguist then turns to the Councillors and says, 'Is not this the decision arrived at?' and they give an emphatic grunt 'Ah'n,' meaning 'Yes.' One of the Court criers then goes up to the successful litigant and marks his right arm with white chalk; some litigants request to be chalked on the forehead as well. For the chalking a fee of 4*s*. is paid. Until the pacification sheep has been paid the person chalked is not supposed to perform any ablution whatever.

"The linguist who gave judgment then sits down and another linguist rises and says to the successful litigant, 'You have got us to do certain work for you and you have to pay us "Abene"' (judgment) (or 'Assida,' thanks), and he is charged a fee. He at once gets up and begs to have it reduced. If he sees that the Councillors are not willing to reduce it he calls to a particular Councillor and says, 'I ask you to intercede for me,' and resumes his seat. That Councillor then intercedes, and after getting it reduced he calls to the party and says, 'I have got so far (mentioning the sum). They have agreed to reduce it so much.' The party then leaves the Court to go and borrow the money. He never has it present, and even though he is well able to pay he always pretends that his circumstances are such that he is bound to get a loan.

[1] Sometimes they cannot agree. In such case they return and they and the Omanhene retire to one side of the Court and discuss the matter and come to an agreement as to the verdict to be given.

"A linguist then gets up and tells the defeated party to refund the summons money and the 'Abene' and to pacify the other side with so much money, so many sheep, and so many bottles of rum. The party proceeds to entreat for a reduction, and he too goes for a loan.

"The Omanhene and Councillors wait till the Abene or Assida and the chalking fee is brought, usually for about a quarter of an hour to an hour. The money is put into the hands of a linguist and is divided then and there. The Omanhene receives one-third, the residue is distributed amongst the Councillors and the linguists, the sureties receiving a portion and the chalker about 6*d*.

"If any witness has been clearly guilty of perjury, he is required to pay for the oath he has broken, and the money goes to the Omanhene alone. The money is not taken in public, but the Omanhene hands the witness to one of the Councillors or linguists and says, 'Mete out to him what is right.' The witness is then told how much the breach of the oath costs and the money is collected from him.

"The pacification sheep and rum are usually paid at once and the successful party retains them for himself. For payment of the money a day is ordinarily fixed. If payment is not made at the appointed time by the unsuccessful party, his surety has to pay. The debt is enforced through the Omanhene.

"No fee is required, but rum or palm wine is brought and the bailiff is given a service fee. If the money is not paid on the request of the bailiff, the judgment debtor's or surety's land or personal property is seized and sold in satisfaction of the debt. In imitation of the English practice it is sold by auction by one of the Omanhene's officers.

"But this enforcement of a debt against the property of a debtor is an innovation copied from the British Courts. It has, however, received the authority of law in the case of Courts that have been brought under the Native Jurisdiction Ordinance (No. 5 of 1883) by rule 5 of that Ordinance. The purely native method of enforcing a debt is to seize the person of a debtor and keep him as a slave until the debt is paid. Not only could the debtor's person be seized, but a member of his family or even one of his fellow-townsmen. A more efficacious method was to seize a stranger, who would then communicate with his own people and press them to make the debtor pay. The debtor then had to pay not only the debt but all expenses incurred by the person seized. In imitation of this practice the Governor of Whydah in 1806 took from a schooner goods to a large amount on the ground that the vessel was from the Island of St. Thomé and a man at Princes Island owed him a debt. Seizure of any person other than the actual debtor or his surety was what was called *panyarring*, and is referred to in s. 15 and rule 13 of the Native Jurisdiction Ordinance.

"*Procedure by Oath.*—The swearing of a chief's oath is a more ancient

method of commencing an action than by way of summons. The oath is sworn in support of some assertion of right, or of some accusation, or for the prevention of some act. For instance, A. says to B. in the course of a land dispute, 'I swear Omanhene (mentioning some Omanhene's name) "Wukuda" that this land is mine.' If B. declines to swear, he is taken to have admitted A.'s claim to the land, and the oath not having been falsely taken, no fine is payable. But if B. swears that the land is his, then either A. or B. must have taken the oath falsely, and any servant of the Omanhene whose oath has been sworn who may be present, or indeed any subject of that Omanhene, may take the two parties in charge and bring them before the Omanhene, who goes into the matter as already described.

"So too if A. charges B. with a crime and B. swears a chief's oath in denial, A. must asseverate his accusation by oath or he will be deemed to have made a false accusation, for which he would be liable in damages. On the two oaths being sworn the matter is brought before the chief whose oath has been taken. Again, if a man is being beaten he may swear an oath on the aggressor to cease beating him, and if the beating continues the oath has been broken and enquiry must take place as to which of the parties is in the right.

"An oath always refers to some national disaster or to some family misfortune. Amongst the Tchi-speaking tribes the most common oath is 'Wukuda,' which commemorates a certain Wednesday (Wukuda) when the Ashantis inflicted a severe defeat on the Akims, the Akwapims, and the Akwamus. Sub-chiefs also have lesser oaths. Even boys and young men swear oaths in assertion of the correctness of their statements, and for them to swear by their foot is common—the foot being an unfortunate member which has had to suffer much in long journeys—and the penalty to be borne by the one in the wrong is a thrashing by his fellows. The fee for the breach of an oath varies with the oath, the means of the individual who is found guilty, and the occasion, and a reduction is always prayed for; but the matter is in the hands of the person whose oath has been broken, and different Omanhenes impose different fines for their 'Wukuda.'

"By far the most solemn oath is 'Inhira' (=blessing). It is that a fetish (mentioning it) may kill the Omanhene or a member of his family. Such an oath is only to be used in extreme cases, and in days past the penalty on the person who took it and was found to be wrong was death. Though prohibited, it is occasionally used, but sheep are sacrificed instead of the guilty party. In a case based on this oath as soon as either party swears the oath or states before the Court I swore '.....' and gives the oath, a sheep has to be killed and rum has to be poured out to appease the fetish, and at the end of the case eight or ten sheep have to be sacrificed with the same object, whilst much rum is used; everything

being at the cost of the guilty party. The fine to the chief is also much larger than in other cases.

"The procedure where a case is initiated by oath is the same as that by summons, only the person who breaks the oath has not only to compensate the successful party, but also to pay a fine for having falsely taken[1] the Omanhene's oath.

"It not infrequently happens that one Omanhene hears a case based on the oath of another Omanhene. In such case the oath fee is sent to the Omanhene whose oath has been falsely taken.

"*Palm-Leaves.*—Only trespass cases can be raised in this way. When the owner of land sees that some one has been making a clearing on his land, he cuts the young inner branches of the palm-tree and hangs them about the place where the trespass has been committed. As he hangs each leaf he says something to the following effect: 'The person who did this and did not make it known to me before he did it, if he comes here to do any other thing may fetish Kataware (or Tanor or Fofie or other fetish) kill him and all his family."

"Usually the trespasser discloses himself, as he too claims to be owner, but if not, the man who set up the palm-leaves, before he can resume work on the land, must sacrifice a sheep on it to propitiate the fetish whose services have been invoked. If the trespasser is ascertained, he or the person putting the land under fetish complains to the Omanhene, who without further fee sends for the opposite party. The procedure already described is gone through, but in this case the guilty party has to appease the fetish. For this purpose he provides rum and a sheep. A small portion of the rum is poured on the ground as a libation to the special fetish, whose name the linguist calls, and the Court drinks the rest. The linguist addresses the fetish in some such terms as these: 'Katawere (or as the case may be), drink this rum. Kojo (as the case may be) went on this land and was found to be a trespasser, and the land therefore has reverted to the right owner. This rum is given you so that if any of his relatives should go on the land nothing will happen to them. Here is a sheep also, the blood of which will appease you, so that you may bless him and all his family." The sheep is then killed.

"On these occasions no pacification money is given, but the unsuccessful party has to provide the winning side with a sheep and rum to remove the curse from the land. 'Abene' is given, but the whole of it goes to the Omanhene.

"Whenever in the course of a trial, or immediately after, a sheep is to be killed, it is given to the linguist, who stabs it in the throat; any other person who may be present then despatches it. There is a special place for killing sheep, which are at once skinned and cut up. Various parts go by right to various people. The linguist has to speak and therefore

[1] "Gone contrary to" is the exact translation.

he gets the breast; the Court crier, who cries out, gets the neck; the Omanhene gets the rump; the unsuccessful party (who provides the animal) gets a hind leg; the successful party gets a very small piece; and each of the Councillors gets his share.

"*Criminal Matters.*—In the foregoing there is no mention of criminal procedure. It is of great rarity for a criminal case to come into Court. Serious crimes are reported to the District Commissioner, whilst other matters are regarded as ground for damages. It may happen sometimes that an offence is dealt with by the Court, but in almost every case it only comes out during the course of a civil matter and is then dealt with summarily in the course of or after the civil case, the fine going to the Omanhene.

"I desire to acknowledge the assistance which I have received from Mr. Newman, nephew of the late Omanhene of Akwapim, and to state that I have made use of the report of the Commission of 1894 on native Courts.

"W. B. G.

"V'BORG, *February 21st*, 1904."

Egypt and the Judicial Adviser's Report.—The Editors are indebted for the following remarks to Sir Raymond West: "The report of the Judicial Adviser for 1904 shows that in Egypt the Government under the teaching of experience is gradually finding its way out of the intricacies and obstructive formalities of the French procedure towards a system more in accordance with the needs of the country and with Oriental habits and character. The pressure of circumstances has already made considerable inroads upon the theatrically specious and elaborate methods which a quarter of a century ago were thought the only alternative to the caprice and injustice of ignorant kazis, and of muftis perversely learned in laws and commentaries having but slight reference to social needs and the conditions of material progress. The Egyptian, like other Orientals, likes a procedure that is simple, open, and direct. He does not appreciate artificial safeguards and arbitrary appraisements of evidence. In his preference of oral to merely documentary proofs he is at direct conflict with French principles. He has faith in the probity of a single judge pronouncing his decision off-hand in the face of the world; long deliberations and conferences of several judges he regards with distrust, feeling assured that when there is an opportunity for undue influence it will be employed and that a multiple Bench may imply a dangerous enfeeblement of individual responsibility. His views and his misgivings are not wholly ungrounded. The open court, the single judge or magistrate, the prompt decision based on salient facts, afford in truth the best guarantees for practical justice in the vast majority of the contentions that arise in a backward, unsophisticated community. Strict superintendence is needed to counteract the influence on the isolated judges of traditional habits of corruption and

carelessness. Such superintendence is now provided : it ought to be placed under the control of the Chief Court rather than of the executive. Add to this a constitution of the recording staff making it independent of any irregular direction by the local judge, and then such safeguards of efficiency as the mechanism of adjudication can afford will have been provided. It is to such a culminating point that the constitution of the Courts in India has been brought near, after more than a century of experiment and effort. The most important interests of natives and Europeans alike are in British India entrusted, and safely entrusted, to the adjudication of purely native tribunals, which in intelligence and purity equal those of any other country. Under a system of vigilant but sympathetic supervision and of liberal remuneration there has grown up in India, and there may grow up in Egypt, a general corporate pride and sense of dignity which repels corrupt advances as the grossest of insults. The idea that the combined denseness of three or five ignorant men will produce decisions rising above their individual intelligence no longer dominates the structure of the Egyptian Courts. There is still too great an expense of futile energy—perhaps too massive a conglomerate of obscurantism—even on the higher and the highest judgment-seats ; but the system at large is gradually adapting itself to its environment and so gaining a possibility of permanence. Ihering dwells on the great advantage that the Romans in their early legislation enjoyed in their freedom from the sway of principles. They aimed straight at the point where a rule was wanted without regard to mere symmetry. Their system, the most harmonious, in the end, of all, was evolved by a natural process from the mass of particular laws and the jural spirit of the lawyers as interpreters of the common will. The English people alone in modern Europe enjoy an equal freedom from the trammels of system. Under English influence a body of laws is growing up in Egypt, especially in the sphere of procedure, which must in time be found quite inconsistent with the artificial and unnatural form imposed from without on the Egyptian legislation, and then will have come the day for a science and a codification based on the spirit of the actual laws as these have originated in the needs, and in turn reacted on the jural convictions of the people.

"The Markaz Courts recently established are a part of the inevitable process. A people of simple habits and transactions, with but little skill to define their contractual intentions, yet awakened suddenly to a consciousness of legal rights and remedies, must needs have a good deal of litigation. They want Courts easily accessible and prompt decisions, more than a refined jurisprudence. The most obvious judgment is what will strike them as most just, and they can patiently dispense with the hardship of repeated appeals. The most important points are the honesty of the judges in the petty local Courts and the popular confidence in their honesty. A vigilant inspection and prompt punishment in cases of corruption will keep down

scandals, while a true judicial sentiment attains growth and strength as the attribute of a well-ordered scale of official ranks, with appreciation, promotion, and competence as the reward of proved desert. These considerations will become more important as the civil jurisdiction of the lowest Courts is extended, for it is in civil litigation that temptations to misfeasance are most often presented.

Summary Tribunals.—"It is a part of the general movement that in cases tried by the Summary Tribunals the limit of value or amount for possible appeal has been raised from £10 to £20. This change has no doubt been founded on experience of the satisfactory work done by the Summary Courts, but it may easily induce carelessness unless strict supervision is exercised, and this supervision ought to be judicial supervision—*i.e.* a certain number of records ought from time to time to be called for and examined by the superior Courts by way of revision. The subordinate judges themselves ought to be made responsible for irregularities on the part of their clerical staff. They, more than others, have the requisite means of observation, and it is hard to suppose that good can arise from a judge's executive staff being placed "under the surveillance of the administrative and police officers in the Markaz." The police, too, it seems, can take cases out of the hands of the local magistrates and send them on to the 'parquet' of a higher court —an authority that was exercised in more than a thousand instances during the year.

"The recently established Summary Tribunals appear to work very satisfactorily. Appeals are made in only about 10 per cent of the cases in which appeals are allowed by law. The unappealable limit has been raised from £10 to £20 and the appeals have thus been reduced by 17 per cent. The number is probably still quite high enough to keep the appellate Courts alive to the shortcomings of their subordinates, and if these are kept fairly up to the mark the curtailment of appeals is an economical blessing.

"A very useful reform has been effected in the almost absurd law which accorded in most cases at least temporary freedom to any convicted culprit who would appeal against his sentence. In Cairo consequently the appeals in the middle class of offences called misdemeanours fell from 8,000 to about 4,000. In the case of fines the limit put on procrastination seems to have reduced the appeals from 25 to 3½ per cent. of the sentences.

"While the lower Courts in Egypt have been using their enlarged powers to keep pace with the litigation brought before them, the superior Court, called the Court of Appeal, appears to have been steadily losing ground in comparison with the work brought before it. The arrear of cases for trial on December 31st was 290 in 1899; it was 725 in 1904. Yet the number of cases disposed of has not diminished but increased. The true remedy for this evil is to be found partly in a more economical distribution of the judicial power in a court which is certainly not undermanned, partly

in an improved civil procedure. In the organisation and constitution of the benches the principle should be applied which has been so beneficially relied on in the lower Courts. In the deliberations of an Appeal Court three heads are generally better than two, but five are seldom better than three. The prompt dismissal of trumpery suits and appeals is effectually provided for under the Indian procedure, from which the Egyptian Government might usefully borrow in its proposed legislation on this subject.

Mehkemehs.—"Side by side with the statutory Courts in Egypt constituted on modern principles, there are semi-ecclesiastical Courts, called Mehkemehs, which in matters of family relations, inheritance, and endowments administer the Shariah or Koranic law according to one or other of the accredited systems of interpretation. The sacred character of the law thus dispensed does not favour its adaptation to new-born circumstances. The halo of sanctity which surrounds the ulema makes Mohammedan doctors and kazis alike quite impervious to merely secular criticism. It was not unnatural that a good Mussulman legislative member should have declared that nothing connected with the Mehkemeh Shariah needs reform; but it was inevitable that such a stand taken up by the Courts and their advocates should gradually make them somewhat ludicrous and wholly incongruous with the general spirit of progress and adaptation. Very recently, it appears, the Legislative Council has somewhat repented of the obsolete doctrine which had previously gained its approval, and now it is recognised that the Mehkemehs really do admit of reform, and even require it, 'whilst in no way departing from the principles of the Shariah.' Something may be done on the lines indicated by the Council; the education of the kadis should be improved; the procedure under the Hanafi law should be rationalised; the salaries of the employees of every grade should be raised to the level of a 'living wage.' Yet after all, so long as the Mehkemehs exist as a wholly separate organisation administering a law that claims the authority of inspiration, it may be safely predicted that the central spirit, the essential doctrines, permeating the system, will make all ameliorations of mere form to a great extent ineffectual. The Mehkemehs ought to be reconstituted as branches or 'sides' of the ordinary Courts. The judges should be made interchangeable and members of the same body. Conferences on mixed questions should be made possible and encouraged. The two classes of judges thus working as colleagues would gradually become acquainted with each other's jural views and tolerant of them. They would become assimilated in spirit and principles by an almost unconscious sympathetic process. The asperities of the Moslem system would be worn away while its essentially just and beneficent provisions, remoulded for modern use, received a permanent confirmation.

"This is the point to which the eyes of patriotic reformers in Egypt should be directed. There is much still to be accomplished, but by patience, honesty of purpose, and working always towards a high ideal, they may

push on to such a level of judicial perfection as to warrant them eventually in demanding the abolition of the Mixed Courts as a needless and outworn anomaly."

Professor Dicey on Law and Public Opinion.—Law has been defined by a distinguished jurist as "public opinion formulated and armed"; and taken as a definition of law as it exists among most civilised nations of modern Europe, it is probably as good a one as can be given. Public opinion, if we look back, is the life of early custom; if we look around us on the England of to-day, it is still the life of the law. It has captured the legislative machine and Parliament does little more than record its mandates. But where, it may be said, does public opinion come in with the despotic ruler? Does a Peter the Czar or a Frederick the Great, a Cromwell or a Napoleon, trouble himself much more about the sentiments of his subjects than the sheepdog about those of his flock? Frederick the Great's comment on the Prussian Press was: "They say what they like, and I do what I like." The truth, however, is that these despotic rulers are great not because they impose their will on the people, but in virtue of their capacity to interpret the genius and aspirations of their people—capacity backed by driving power. This it is which makes their work permanent. Autocratic in form, it is still "broad based upon a people's will." But Mr. Dicey's concern in his most interesting book is not so much with the larger problem as with the influences which were moulding legislation in England during the eighteenth century; and here he finds three main streams of tendency: from 1800–1825 Toryism—resulting in legislative stagnation; from 1825–1870 Individualism—identified with the name of Bentham; and from 1865–1900 Collectivism. This is the stream which is running strong to-day. It is that which favours the intervention of the State in the interests of the mass of the people even at some sacrifice of personal freedom. Here is Mr. Dicey's retrospect and forecast: "The time is rapidly coming when the State will, as regards the regulation of labour, aim at as much omnipotence and omniscience as is obtainable by any institution created by human beings. State control invoked originally to arrest the ill-usage of children in large factories has begun to take in hand the proper management of shops. A shop-girl has already acquired a legal right to a seat. The hours of shop-closing may now in most cases be fixed by a local authority. The Public Health Acts, starting in 1848 as a modest attempt to get rid of nuisances calculated to generate disease, have expanded into a complete sanitary code. The Housing of the Working Classes Acts, which began with the Labouring Classes' Lodging Houses Act, 1851, have grown into a complete scheme for clearing insanitary areas and providing decent accommodation for the working-class population." All this, and much more, is unrolling itself before our eyes to-day. If it is State Socialism, it is the ideal which Plato and Aristotle preached long ago.

Mr. Haldane and an Imperial Government Committee.—As an interesting

commentary on Sir Frederick Pollock's scheme of Imperial organisation we quote the following remarks by the Rt. Hon. R. B. Haldane from a paper by him entitled "The Executive Brain of the British Empire."

"In a paper read the other day at the Colonial Institute, and which represented the conclusions of an informal Committee over which he had been presiding for the last two years, Sir Frederick Pollock drew attention to the unsatisfactory nature of the machinery by which the affairs of the Empire are carried on. There arise from time to time matters which concern the relations of the distant dominions of the Crown to other Great Powers. Examples of these are the recent controversy over the Alaska boundary between Canada and the United States, and the differences between Newfoundland and France over the fishing rights. Three separate Departments of the King's Government have to deal with every such question, the Colonial Office, the Foreign Office, and the Colonial Government concerned. The last has no direct access to the second, and is often dissatisfied with the apparent powerlessness of the first as to affairs outside its own sphere. The notion of Sir Frederick Pollock and those who worked with him was that, just as certain questions arising out of the relations of the Army and the Navy now come under a more than Departmental authority, so it should be with a certain class of questions which touch the policy of the Empire as a whole. There are various forms in which the Home and Colonial Governments may be more systematically than at present brought, on the necessary occasions, under a common roof. The idea is not wholly novel. It was contained in germ in the periodic Colonial Conferences initiated by Lord Ripon and developed by Mr. Chamberlain, and which now take place at fixed intervals. But our system of administration makes no provision either for the intervals or for a multitude of affairs which are neither properly matter for these conferences nor for a single department. Topics of law reform arise which affect the Empire as a whole. Such are copyright and merchant shipping. Again, the state of the Supreme Court of Appeal is unsatisfactory. Just now it is split into the House of Lords, which acts for England, Scotland, and Ireland, and the Judicial Committee, differently organised under a different roof, which acts for the rest of the King's dominions. The neglect of statesmen has led to the second being starved for the sake of the first. It is no part of the business of the Colonial Office to look after it, and there are murmurs, loud and long, every now and then, over the state of what after all is an important link between the Colonies and the Mother Country. Again there are questions of communications, of steamship lines, and of cables, which belong to the development of that policy of Imperial Unity which rests on common ends and constant intercourse, and which is free from the galling associations of Preference. But there is no Government Office whose duty it is to watch these things, to collect information, and to see that opportunities are not neglected. An Imperial Government Committee, containing representatives of the Colonies, and in continuous communication with their Governments, seems as necessary as in the somewhat analogous case of Imperial Defence. Its functions need not be more than advisory. They need not interfere with those of the Colonial Office, any more than do those of the other Committees interfere with the work of the War Office and the Admiralty. But the existence of such a body would secure the continuous attention of the Government as a whole to matters which have a common interest for the whole Empire, and it would enable the Colonies and the Home Government to take counsel together in a way which is not possible

at the present time. A capable official Secretary, doing the work which Sir George Clark does for the Defence Committee, would secure the collection of the necessary materials, and would be the guarantee for a certain continuity of policy.

The Japanese Civil Code.—Much that is instructive as to Japan of to-day, and how it came to be what it is, will be found in the paper on "The New Japanese Civil Code as materials for the study of Comparative Jurisprudence," by Nabushige Hazumi, Professor of Law at Tokio University. In a sense, that Code and much else which has been completed since Japan began to set her house in order, are merely the carrying out of the oath of the Emperor on ascending the throne; in the five articles of the solemn Imperial oath is one that "knowledge should be sought for throughout the world, so that the welfare of the Empire might be promoted." And diligently and in all available quarters were sought materials to make the Civil Code accord with the best lights of science. At first the French Code and the influence of French jurists were supreme. As it stood in 1890, when it was first adopted, after some fifteen years' labour, the Code was a close imitation of the French Code, in contents, phraseology, and arrangement. Then arose a lively discussion, known as "the postponement campaign," the history of which Professor Hazumi—a distinguished leader of the "postponement party"—narrates. The draft Code submitted to a committee which examined it in the light of the codes and statutes of most civilised countries. "This method of preparing the draft gave a characteristic feature to the new Code. The Japanese Civil Code may be said to be a fruit of comparative jurisprudence. At first sight it may appear that the new Code was very closely modelled upon the new German Civil Code. . . . But, on closer examination of the principles and rules adopted in the Code, it will appear that they gathered materials from all parts of the civilised world, and freely adopted rules or principles from the laws of any country, wherever they saw the advantage of doing so." Professor Hazumi makes some striking remarks on the objects of codification. It is usual to say that a code comes after long experience of conflicting legislation. He is nearer the mark when he says that "a comprehensive legislation generally follows a great social revolution." Each of the three great epochs in Japanese history—the introduction of Chinese civilisation, the rise of feudalism, and the introduction of Western civilisation—was followed by codification. One point which is brought out will be novel to most jurists; the early Japanese codes consisted of commands addressed to the officials, not to the people. "They were rules for the conduct of officials, not rules of conduct for the citizen." There was no idea that publication was essential. The conception of law being addressed to all citizens was reached only after the introduction of Western civilisation.

Northern Nigeria: The Alkali of Bida.—The following notes furnished

by Chief Justice Gollan of a conversation with the Alkali of Bida will interest our readers:—

"The Alkali is the sole judge of Bida unless the Emir is learned in the law ('Savez book' the interpreter put it), in which case he can hold a Court. If a man comes to me to claim a debt against any one, I can at once send for the debtor. I send my messenger for him, but first of all the complainant must pay 400 cowries (worth about three-halfpence) to cover the cost of sending the messenger. The complainant pays 400 cowries if the debtor is a small man, but 1000 if the debtor is a 'big' man. If the claim is for £1, the complainant pays 400 cowries; and no more though the claim is for £10 or any other sum. The complainant pays more where the debtor is a 'big' man because the latter will not attend for the first summons. He requires to be summoned twice. A small man will come at the first summons, and so the fee to be paid by the complainant is less. The fees I have mentioned only apply to persons living in Bida. If the messenger has to go a distance—say two days' journey—the fee would be 10,000 cowries (about 3s.). The fee would not in the last-mentioned case be greater, even though the defendant happened to be a 'big' man. If a defendant does not attend on a summons, the Alkali will send his messenger on three occasions to him. If he fails to attend after the third summons, the Alkali may send a fourth messenger to tell him that if he fails to come, a dogari will be sent to fetch him. (A dogari is a native policeman, and usually a most accomplished robber.) If the defendant still refuses to attend, the Alkali sends a dogari for him. An Alkali of Bida sends for a defendant on his own authority, and has no need to appeal to the Emir for assistance. An Alkali of Bida has never had to ask the Emir to help him to bring in a disobedient defendant. The complainant does not pay the costs entailed by the successive summons sent to a recalcitrant defendant. The complainant only pays one fee—the further costs are a matter between the Alkali and the defendant.

"In criminal cases the procedure is the same as in a civil case. The Alkali can summon a witness also. If a witness summoned on four occasions does not attend, the Alkali can send a dogari for him. The party to a case who wants a witness called, pays for him on the same scale as in the case of a summons to a defendant. I can send a dogari for a 'big' man, but I should not do so without first informing the Emir. About three months ago I sent for a 'big' man who refused to obey my summons. I went to the Emir and told him I should have to send a dogari to force his attendance. The Emir sent for the 'big' man and advised him to obey my summons, and said that if he, the Emir, were summoned by me, he would attend. (The Emir subsequently confirmed this statement of the Alkali.) The 'big' man then came in. I would send a dogari for the Markoun—the Emir's own brother—if he failed to obey the fourth summons.

"*Procedure in Court.*—When all the parties are before the Court, the plaintiff states his case. He is not sworn, but if the defendant denies the allegations made by him, the defendant is sworn. The plaintiff then calls his witnesses. They are not sworn in the first instance, but only if the defendant persists in his denials. If both parties bring an equal number of witnesses to support their respective cases, the Alkali drives the whole lot of witnesses away and tells the parties to bring fresh witnesses. If the parties cannot find fresh witnesses, the Alkali cannot judge the case, but tries to make the parties compromise. If a defendant has four witnesses and a plaintiff only two, I should decide for the defendant because he has four witnesses to plaintiff's two. If there are no witnesses, the Alkali will decide in favour of the defendant because he has sworn on the Koran. If a defendant will not swear, the Alkali will then swear the plaintiff and decide in his favour. A man who commits perjury may be given ten strokes. That is the punishment for perjury in all cases but murder. (*Note.*—The man who administers a flogging by the sentence of a native Court must during the whole time he is inflicting the strokes either hold a calabash on his head, or else keep a cowrie in the armpit of the arm with which the strokes are being given. The punishment is therefore not a severe one, and may account, in some measure, for the readiness with which witnesses perjure themselves whenever they possibly can.) A man who falsely swears a charge of murder against another is liable to imprisonment for life if the charge is dismissed. If the accused is convicted, and a witness is subsequently discovered to have perjured himself, the latter is given the same punishment as was inflicted on the former. If the person wrongly convicted was executed, so is the person who committed perjury; if the former was sentenced to pay a heavy fine, the latter is made to pay the same fine."

Native Courts of the Gold Coast.—The following case sent by the Committee of the Gold Coast Branch illustrates the problems of that jurisdiction. On July 21, 1904, judgment was delivered by Mr. Justice Pennington in the important case of *Gambra* v. *Num.* The plaintiff claimed damages for assault and false imprisonment. He was arrested on a charge of stealing gold from a corpse, and was tried and imprisoned by Kojo Num, chief of Deyinassi, a chief not subject to the Native Jurisdiction Ordinance. The case raised the important question as to what effect the Gold Coast Order in Council, 1901, had upon the jurisdiction of native chiefs. In the course of his judgment the learned judge stated that, for reasons which he gives at length, he was convinced that native Courts, unless established by the Legislature or by the King in Council, have ceased since September 26, 1901, to be Courts of competent jurisdiction either in civil or criminal cases. Inasmuch, however, as the Full Court were equally divided on this point in December last in *Bainyi's* cases, where, however, the jurisdiction in dispute was of a civil and not of a criminal nature, the decision in *Gambra*

v. *Num* can hardly be taken as a final pronouncement that all jurisdiction of native Courts not under the Native Jurisdiction Ordinance has been finally abolished. As regards their criminal jurisdiction, however, which was really the point at issue in *Gambra* v. *Num*, Mr. Justice Pennington decided that it was taken away by the combined effect of the Gold Coast Order in Council and of Section 12 of the Criminal Code, and to this extent the judgment of course holds good. One Ghanfie, who had stood surety for Gambra according to native custom in his trial before Num, and was imprisoned because the fine inflicted on Gambra was not paid, also sued Num before Mr. Justice Pennington for false imprisonment, and obtained damages.

The Churches (Scotland) Act.—We are indebted to Mr. A. Taylor Innes for the following note on the progress of this interesting question: "The course of events has confirmed the anticipation set forth in previous pages (v. 493 and vi. 169) that the House of Lords' judgment of August last would require immediate legislation, even before any reconsideration of the general law. Following upon a Royal Commission appointed in December, a bill promised in the King's Speech in February is now passing the House of Commons, with the approval of both sides, for the purpose of dividing the property between the legal Free Church, found not capable of fulfilling the large trusts handed over to it last year, and the United Free Church, already declared to be the only body which can deal with them. On the second reading an interesting discussion as to the right of Parliament practically to reverse a decision of the Courts took place between the English and Scottish K.C.'s., Mr. Cripps and Mr. Shaw, Mr. Morley intervening. The Church of Scotland, which of recent years had repeatedly attempted to mitigate the subscription of its ministers by its own powers rather than go to Parliament, found its right to do so challenged by the recent judgment, and especially, in the view of the Prime Minister, by the Lord Chancellor; and at the eleventh hour a clause handing to it control not only over that subscription, but also over that of the theological chairs in the Universities, was put by the Government into the bill. It retains, however, the statutory bond between the Westminster Confession and the Church itself. On the other hand the Free Churches have shown more and more their belief that law must make room for their claim to change and develop. The American Presbyterians have now completed their elaborate revision of the same creed, the power to do so being amply recognised by American law. Even the Scottish Moderator of the 'Wee Frees,' in the Assembly which this year claimed the property under last year's fettering judgment, avowed that the moment his Church found anything wrong in that very Confession it must throw it over. And the United Free Church, resolved that there shall be no mistake as to the terms on which it recovers and holds its property, has expanded its Declaration of 1900 into 'Resolutions

on Spiritual Independence,' which make it a 'fundamental principle and rule, of this Church' from the beginning that she has 'the sole and exclusive right and power from time to time, as duty may require, through her courts to alter, change, add to, or modify her constitution and laws, subordinate standards and formulas, and to determine and declare what these are, and to unite with other Christian churches,' always under the methods of her 'Barrier Act' or Presbyterian *referendum*. This is very strong; but it is Presbyterian, and seems to meet Lord Davey's demand that it be 'clear beyond the possibility of question.'"

Anglo-French Marriages.—The marriage law of France is a very strict one, and, it being a matter of State policy, there is little likelihood of its being relaxed. English girls therefore intermarrying with young Frenchmen, whether in France or in England, must continue to run risks; but those risks may be reduced to a minimum, and it is satisfactory to find that the two Governments have agreed on a form of certificate to be given by French Consuls which ought to meet the case. The certificate in substance declares that the intending French husband has fulfilled all the requirements of French law for contracting a valid marriage, and, translated, runs thus:

I, Consul for the French Republic at certify that from legal documents produced to me it appears—

1. That M. (profession or occupation) born at on the residing at who proposes to contract marriage with (profession) born at on the residing at is of French nationality.

2. That he has fulfilled the requirements of French law as to the publication of the notices necessary for his marriage.

3. That no opposition having been offered and all the necessary formalities having been carried out, there is not to my knowledge any legal obstacle to the intended marriage and that the parties to the intended marriage would be allowed to contract marriage in France.

And I further certify that pursuant to the terms of Articles 47 and 170 of the Civil Code, a marriage contracted in a foreign country between two persons of French nationality, or between a person of French nationality and a person of another nationality is valid if celebrated with the formalities customary in the country where such marriage takes place, provided that the notifications and publication prescribed by French law have preceded such marriage, and that the contracting party of French nationality has not infringed the provisions of Articles 144 to 164 of the Civil Code.

In testimony of which I have issued this certificate to have all due legal effect and validity.

Given at on the 190 .

Consul for the French Republic.

Ladies' schools will do well to make this certificate form part of the curriculum in future.

The New Edition of Burge.—It is now sixty-seven years since Burge's *Commentaries on Colonial and Foreign Laws* appeared. The systems

of jurisprudence comprised in that wonderful work are the Civilian, the law of Holland, the law of Spain, the Coutumes of Paris and Normandy, the law of France, the law of Scotland, the law of England, the local laws of the Colonies and the West Indies and North America, and the laws of the United States. Circa pectus æs triplex was surely his who ventured on that sea. And since then how much has happened! But the gulf has been bridged over, and the first instalment of the new edition under the general editorship of Mr. Justice Wood Renton of Mauritius and Mr. G. G. Phillimore is already in the press.

Meaning of Contraband.—Any judicial exposition of the meaning of contraband is at present welcome; and we do not hesitate to quote largely from a recent judgment by Sir H. S. Berkeley, Chief Justice of the Supreme Court of Hong-Kong, in *Osaka Khosen Kaisha* v. *The Owners of the SS. Prometheus*. The ship was chartered by an association known as "The Osaka Shosen Kaisha" to carry cargo and passengers; there was a clause in the charter that in case of war the vessel was not to be directed to any blockaded port, or to carry contraband of war. The cargo offered consisted of breadstuffs and timber, and the ports to which the vessel was directed to go were Japanese ports. The matter having been referred to arbitration, the arbitrator asked the opinion of the Court whether, having regard to the terms of Russia's declaration, the cargo intended for shipment was contraband; and if it was, "whether Russia's declaration in this respect is binding upon neutrals." It will be remembered that the Russian regulation included among unconditional contraband "generally all objects intended for war by sea or land, including rice, provisions, horses, etc." The Chief Justice quoted the definition of contraband in Wharton's *Law Lexicon*, and referred to the fact that the term is used in the Treaty of Paris without any definition as a well-known expression. He proceeded thus:—

> What then was the meaning which it must fairly be assumed the Plenipotentiaries attached to the expression "contraband of war" as used by them in the Treaty of Paris? It seems to me that the Plenipotentiaries had in their minds the meaning which at that time attached to the expression "contraband of war," resulting from the decisions of the courts of law of the nations of Europe and America; principally indeed the decisions in the English Courts on cases arising during the Napoleonic War. What then is the result of those decisions? What meaning has been thereby attached to the expression "contraband of war"? The result has been to attach to that expression the following twofold meaning:—(1) Absolute contraband of war—which includes everything useful for war only; (2) That which is conditional contraband of war—which includes all things which though useful for both peace and war become contraband if destined for the purposes of war, excluding from the meaning of contraband of war such things as are useful for the purposes of peace only. "Provisions," consequently, come within the definition of conditional contraband only if and when destined for the enemy's forces; otherwise they are excluded from the definition. That is, in my opinion, the true meaning to be attached to the expression "contraband of war," and that is the sense which, in my opinion, that expression bears on a true construction of

the Declaration of the Plenipotentiaries who signed the Treaty of Paris of 1856. That is, in my opinion, the sense in which the parties to the charter of the ship *Prometheus* must be taken to have understood the expression "contraband of war" when they agreed by Clause 37 that the ship *Prometheus* was not to "carry any contraband of war." To construe that expression as meaning whatever might at any time, that is to say from time to time, be declared by Russia to be contraband, as the learned counsel for the owner contended I should, would be to import into the contract between the parties an element of uncertainty where none need exist. The contract was made in Hong-Kong, and therefore in the absence of evidence to the contrary which I could act upon the parties must be taken to have used the expression "contraband of war" in the sense in which it is understood in British courts of law, which is its sense in international law. It cannot be successfully contended that provisions would be regarded by British courts of law as unconditional contraband of war, or that there is any likelihood that they will ever take that view. Had this Court been asked at any time between the signing of the charter party on February 10th, 1904, and the issuing of the Russian declaration to construe the meaning of the words "contraband of war," it cannot be doubted that it would have excluded provisions from the category of unconditional contraband. It is contended however that the Court ought to place a different meaning on that expression, after, and in view of, the terms of the Russian declaration, inasmuch as Russia being a sovereign independent Power has a prerogative right to declare whatever she pleases to be contraband of war in any war in which she may be engaged, and that the effect of the Russian declaration having been to make provisions unconditionally contraband, the master of the ship *Prometheus* was excused from loading them on his ship. In this contention I am unable to concur. In the view which I take of the effect of the Declaration under the Treaty of Paris of 1856, and of the undertaking by the several Powers signatory thereto, given in the Protocol No. 24, not to depart from the principles enunciated in the Declaration, I think that Russia was not at liberty to declare provisions unconditional contraband of war; and that her declaration in that respect could not affect the contract between the parties to this charter party, even supposing it could be held that contraband of war means, as used in the charter party, whatever Russia may consider as such: for Russia having been a party to the solemn declaration of "fixed principles" under the Treaty of Paris was not at liberty to disregard those principles and was therefore bound to recognise, and act upon, the generally accepted rule of international law that provisions are not unconditional contraband. In this view I am supported by the decision in the case of *Pollard* v. *Bell*, 8 Term Reports 424, where it was laid down that it is not competent to one nation to add to the law of nations by its own arbitrary ordinances without the concurrence of other nations! Against the view which I hold, viz. that provisions are by the law of nations only conditional contraband, and that they were so regarded by the signatories to the Treaty of Paris, 1856, it was urged that notwithstanding that treaty the French when engaged in hostilities against China in 1885 intended to treat as contraband all shipments of rice destined to the open ports north of Canton. That fact, however, only amounts to this: that on that occasion France proposed to act in a manner which, had she been called upon to defend, she would have found difficulty in justifying, in the face of the declaration under the Treaty of Paris to which she was a party. Fortunately preliminaries of peace were settled before any seizures were in fact made by the French, and so the intended action of France cannot properly be drawn into a precedent against the principle enunciated in *Pollard* v. *Bell*. It is, moreover, to be

remarked in connection with this intended action on the part of France in 1885 that her right to make provisions unconditional contraband was at the time denied by Great Britain. In *Pollard* v. *Bell*, decided in 1800, a French Prize Court, France then being at war with Great Britain, and Denmark being neutral, condemned a Danish ship on the ground that she was at the time of capture carrying a Scotchman as supercargo in violation of an ordinance by which it was declared that all ships should be confiscated "wherever there shall be found on board a supercargo, merchant, commissary, or chief officer being an enemy." Applying the principle of that case to the present case, I say that the Russian declaration including provisions among the list of articles absolutely contraband and so departing from the recognised custom of nations had no binding effect upon other nations, and consequently could not excuse the non-performance of the contract under the charter party between the Osaka Shosen Kaisha and the owners of the SS. *Prometheus*. It was contended on behalf of the owners of the *Prometheus* that the term "law" as applied to this recognised system of principles and rules known as international law is an inexact expression, that there is, in other words, no such thing as international law; that there can be no such law binding upon all nations inasmuch as there is no sanction for such law, that is to say that there is no means by which obedience to such law can be imposed upon any given nation refusing obedience thereto. I do not concur in that contention. In my opinion a law may be established and become international, that is to say binding upon all nations, by the agreement of such nations to be bound thereby, although it may be impossible to enforce obedience thereto by any given nation party to the agreement. The resistance of a nation to a law to which it has agreed does not derogate from the authority of the law because that resistance cannot, perhaps, be overcome. Such resistance merely makes the resisting nation a breaker of the law to which it has given its adherence, but it leaves the law, to the establishment of which the resisting nation was a party, still subsisting. Could it be successfully contended that because any given person or body of persons possessed for the time being power to resist an established municipal law such law had no existence? The answer to such a contention would be that the law still existed, though it might not for the time being be possible to enforce obedience to it.

"**Justice Laudative.**"—Many suggestions and ideas affecting criminal law are to be found in the work which has lately appeared by M. Holbach, entitled *Justice Laudative*. His central idea is that, complementary to penal law, there should be an organised system of rewards and honours for the well-doing and meritorious. Society has worked too exclusively with punishments; let it appeal to other motives than fear—in particular, to the love of approbation. There is a lamentable gap while penal laws abound, and there is "nul Code laudatif qui récompense, et à peine quelques lois laudatives du bien, très rares, si non quelques récompenses indirectes qui n'apparaissent à l'esprit qu'après un effort de raissonnement." With much ingenuity and in many ways M. Holbach develops and illustrates this idea. It will be new to most of his readers to learn that some such scheme was actually adopted by the revolutionary legislation of France. He quotes the text of a forgotten decree of August, 1790, the seven articles of which work out the principle, "The State ought to reward services to the commonwealth." He does not tell us whether this decree was ever put in

force by its authors. He is also able to quote Montaigne in support of his contention; and a passage from Ihering's *Zweck im Recht* is to much the same effect. But nowhere has the idea been commented upon in so much detail as in *Justice Laudative.*

Marriage of Converts to Christianity.—From the local branch of the Society in the island of Grenada we receive the following:

"In the case of *Frame & Co.* v. *Wardally* in the Supreme Court of Grenada a question emerged of some interest, though it did not become necessary to decide it. It was a suit for administration brought against the widow and children of a testator as executrix and legatees and devisees under the will. In November, 1901, an application was made to strike out the names of certain of the defendant children on the ground that they were illegitimate. It appeared from the affidavit of the defendant widow that she and the testator were both natives of India, and came to Grenada about thirty-six years previously; that they belonged to the Mussulman faith before coming, and continued in that faith for some time after arriving there; that they were married before leaving India according to the rites of the Mussulman faith, and lived ever after such marriage as man and wife; that about twenty years previously they were converted to Christianity, and went through the marriage ceremony according to Christian rites on June 16, 1881; that the defendants whose names it was sought to strike out were children of the deponent and the testator born after the Mussulman marriage and before the Christian marriage, and had always been supported and treated by their parents in the same way as their children born after the Christian marriage.

"The Chief Justice declined to accede to the application on the ground that, assuming the persons in question were illegitimate, the circumstances of the case brought it within the ratio decidendi of *Crook* v. *Hill*, L.L. 6 Ch. App. 314, affirmed in the House of Lords, L.R. 6 E. & I. 276, where James, L.J., stated the question to be whether, having regard to the language of the will, and taking into consideration the whole of the will and the whole of the surrounding circumstances at the time the will was made, there is so strong a probability of intention to include, or not to exclude, the children in question as that a contrary intention cannot be supposed. But the Chief Justice went on to point out that, whilst in all the cases referred to the illegitimacy of the children *de quibus* was a matter of which parents, testators, and all concerned were and must be taken to have been fully aware at the time of birth, the case here seemed to be exactly the contrary. In basing his decision, therefore, as he did, upon the assumption made by all parties during the argument that the children *ante nati* were illegitimate, the Chief Justice added that he must not be taken to have decided that they were so; that point had not been argued, and must be taken to be still open. The status of the children of Mussulmans legally married by Mussulman rites, and converted to Christianity subsequent to the children's birth, has probably been discussed in the Courts of some of H.M.'s dominions; and it would be interesting to know the nature and grounds of the decisions. Possibly the matter may even have formed the subject of legislation."

Professor Holland's "Handbook of the Laws and Customs of the War on Land": A Correction.—Mr. Atlay desires to correct a statement contained in an article entitled "Legitimate and Illegitimate Modes of Warfare," which appeared in the last number of the Journal of Comparative Legislation

(1904, p. 12). Misled by the late Sir Henry Maine (*Lectures on International Law*, p. 130), he had attributed to Lord Thring the authorship of an official handbook on the customs of land warfare. Sir Henry Thring, as he then was, contributed a chapter (xiv.) on the subject to the *Manual of Military Law*, first published in 1883, in which the opinions of the text writers were set out, but Professor Holland's Handbook, published in April, 1904, and compiled at the request of the Government, is the first work of the kind. It is entirely independent of, and bears no relation to, Lord Thring's chapter.

Nuda Pacta in Roman-Dutch Law.—We have received, by the kindness of a correspondent, a copy of the judgment of the Chief Justice of the Supreme Court of the Cape of Good Hope in *Temfu* v. *Webster*; a decision, important, inasmuch as it determines a fundamental point of Roman-Dutch Law in a manner different from that in which it has been decided by the Supreme Court of the Transvaal. The question was whether an action is maintainable on a promise not supported by valuable consideration. The latter held that an action in such circumstances lay. Roman-Dutch Law knew nothing of the English doctrine of valuable consideration. Chief Justice de Villiers, on the other hand, held that a promise not supported by reasonable consideration was not enforceable. Such was the law as stated in the older Dutch authorities; such, too, the law in other colonies in which Roman-Dutch Law prevails; and, if it was an error, one so common and inveterate that it was too late to correct it by judicial decision.

"**Renvoi.**"[1]—Writing with reference to this topic, Mr. Thomas Baty says: "Private international law really rests on public international law, and on its main postulate—that sovereignty is territorial. The national sovereign is at perfect liberty, as regards all persons and things within the limits of his own territorial jurisdiction, to give effect to his own ideas as to the most proper way of treating combinations of circumstances which have a foreign bearing. Attempts to deduce a theoretically perfect private international law from a conflicting principle—namely, an assumed concurrent and even over-riding right of the national sovereign to regulate the affairs of his subjects, wherever they may be—can only prove misleading in result. Such an attempt involves the assumption that the law of nationality has some sort of inherent validity as the criterion of private law. On this footing the competing principles of domicile and nationality do not present themselves on equal terms. The former appears not as an alternative criterion to the latter, but as a possible criterion occasionally deducible from it on account of the obedience which a subject owes to his sovereign who adopts it.

"If a state whose legislator is imbued with the principle that (in private law matters) the citizen's affairs are properly regulated by his national sovereign finds that sovereign making use of the principle of domicile, the theoretical conclusion is ready to hand that that principle, like all

[1] By J. Pawley Bate, LL.D.

the rest of the sovereign's legislation, must be applicable to his subjects. The conclusion is by no means so obvious if, discarding the notion that any such inherent value is resident in a remote sovereign's commands, the principle of applying the law of the nationality is regarded on its own merits, and as being subject to rational exceptions. And if a legislator, on the contrary, regards domicile as the criterion of private law, he *ipso facto* denies any special and inherent validity, as such, to the law of a person's nationality; and may logically make what exceptions he likes to the law of the domicile taken in its entirety. That is to say, the legislator who freely adopts the criterion of nationality, or that of domicile, is not committed to the principle of *renvoi*. The legislator who starts from the idea of the inherent authority of the national sovereign is bound to recognise the other sovereign's theories of private international law and to allow them to neutralise his own.

"*Renvoi*, consequently, has acquired quite a new importance of late years. Theories of the continuance of national authority over *nationaux* abroad necessitate it. The frequent adoption of nationality in recent codes as a criterion raises a multiplicity of cases for its possible application.

"It is somewhat curious that, until the recent development of the doctrine of nationality, the question of the conflicts of competing rules of private international law never seems to have received any but the slightest illustration. It never seems to have been thought that when a foreign law was invoked, anything else but ordinary or normal foreign law was meant, or that the foreigner's rules for the invocation of foreign law were to be dragged in as well.

"The *renvoi* theory, of course, does drag them in. A.'s capacity comes up for decision in the English Courts. A., a British subject, is domiciled in France, and English law will therefore apply to him the law of his French domicile; but, according to the *renvoi* theory, it must take into consideration the fact that French law applies to him the law of his political country, Great Britain and Ireland. Consequently, the English Court must apply to him British law after all. Clearly, there is room to argue in a circle, or "infinite series," that British law throws the decision back on French: and so on *ad infinitum*. As Buzzati says: 'It is the application of lawn-tennis to international law.' But the more material criticism is perhaps to apply the solvent of common sense; and to ask ourselves whether private international law is founded on the dictates of general convenience under modern conditions of international intercourse or on some abstract theory of jurisdiction or justiciability. If the latter there is much to be said for *renvoi*. But is it not more probable that private international law is based on the former? Confronted with circumstances which make it unfair to apply the home law, a nation has to consider what body of law, on the whole, is the fairest to choose for application in such cases.

"The law of a person's own country is a conceivable solution, and may sometimes be the best. The law of the country where he lives and among whose people he moves, is not a worse solution. In either case, the point is that it is of the essence of the solution that it is the normal and ordinary law for the bulk of his countrymen (by allegiance or permanent residence) which is chosen as a suitable one to regulate his affairs. To choose deliberately the law of Spain as, on the whole, the most just law to apply to an Englishman living in Spain, and then to refuse to apply it because a recondite and purely ancillary provision of Spanish law makes English law applicable to an Englishman, is not an intelligible position.

"The difficult questions inseparable from this subject are treated by Dr. Pawley Bate with fulness and thorough knowledge of the literature (entirely continental). The problems are stated clearly, and a consistent view of the matter forcibly set forward. Criticisms on minor points of detail are possible: thus when Farwell J. asks:[1] 'What nationality at his death can a Court which ignores domicile attribute to a man born in Scotland, who makes his home and fortune at the Cape, and dies in England?' Dr. Bate replies, 'That one of the three legal areas where the Court would say, if it did not ignore domicile, that he last was domiciled.' But why, there being no common law of the British Empire directing personal law to be ascertained by domicile, should the foreign Court proceed to determine the proper law by a reference to domicile rather than to race or residence? He seems to be on surer ground in objecting to Farwell J.'s phrase, 'The law of England distributes [certain] movables in accordance with domicile of origin,' the authority for which he confesses he cannot conjecture (nor can this reviewer). The judge's attribution of some occult pre-eminence to the law of England, as 'the country with which alone' foreign countries are in 'diplomatic relation' is also apparently a surprise to Dr. Bate (as it undoubtedly would be to the Prime Minister.)

"He disposes of the few English cases which can be interpreted as affording support to the *renvoi* doctrine by pointing out that they were decided, for the most part, before the doctrine was born: and that they lend no support to it in its broad application, but are mere illustrations of the anxiety of the Courts to uphold testamentary dispositions against objections of form *ut res magis valeat quam pereat.* It is, as he says, nearly impossible to believe that the Prerogative Court or the Privy Council would have held, *e converso*, that a will was bad because made in accordance with the forms of a deceased's domicile, but not so as to satisfy his national English law, to which the foreign law purported to refer the decision. It will require a great deal more than Sir H. Jenner's deliverance in *Collier* v. *Rivaz* to make it advisable for British judges to admit—contrary to the dicta of Lord Watson and Sir C. Cresswell—a principle which is fundamentally

[1] In *Re Johnson* [1903, 1 C. 821].

at variance with our views of private international law—which are, that a person domiciled abroad is best treated, for certain purposes, in Britain, as living under the *régime* under which his foreign neighbours live: as the common dictum expresses it, 'When you are at Rome, you must do as Rome does.'

"The fallacy—as we cannot but think it—that it is not the law of his neighbours, but the law of his neighbour's Courts, which is applicable to him, underlies the argument by which Dr. Westlake appears to justify, up to a certain point, the novel doctrine. He assumes that the private law of a given country is addressed to the class of persons to which that country considers its own maxims of private law applicable. 'Majority is attained at twenty-one,' he considers meaningless: the full context of the English law is: 'For persons domiciled in England, majority is attained at twenty-one.' Finding that English law has accordingly no rule for persons domiciled in France, a French Court, in ascertaining whether an Anglo-British subject is of age or not, is thrown back on its own law, which is always at hand, as *lex fori*, to fill this, as any other, vacuum. In this view the French law does not accept a reference back from the law of the nationality, but simply supplies the hiatus in the latter. There is no 'lawn-tennis,' but a blank in English law, on this hypothesis, which is styled the theory of *désistement*. Dr. Bate considers this justification correct in point of logic, but so inconsistent with the principles on which our private international law has been settled, as to be inadmissible. But, surely, the English law has something to say to other people than those domiciled in England. It is equally part of the English law that persons domiciled in France are to have their capacity ascertained by French law, and there is no hiatus. The conception of the limitation of the private law of a country to a particular class of persons, its subjects or its residents, is historically valid. But it has no relation to the facts of modern life. English law is limited, in one sense, by the territorial area of England. But within that area it is universally applicable, and ascertains the capacity of each individual in the world by a reference to the normal law of his domicile. This is not to contemn the rights of other nations; the very reference to domicile at all as expressing the extent of the class whom the English legislator addresses is equally (or more) obnoxious to such a criticism. For it is an assumption to regulate the capacity of (amongst others) persons of foreign nationality domiciled in England. But, indeed, how can the adoption of a particular rule for deciding the capacity of any person *for one's own purposes* amount to a pretension to regulate once and for all his status in that regard? It is a mistake to consider the law of any country respecting the capacity of a person as a set of commands directed to that person. It is, at least to an equal extent, a set of commands directed to the whole world in respect of him.

"The conception of law as a command, addressed to an individual and

purporting to regulate once for all his entire jural relations, is simply misleading. It is just as much addressed to the rest of the world. The English law cannot declare a person major at twenty-one, without profoundly modifying the position of all foreigners, in or out of England, who have dealings with him. It does not affect to issue general commands to foreigners abroad—but it certainly has the right to, and does, issue such commands, in respect of matters connected with England. A. has no general right to command B.'s servants. But he has a right to command them not to speak to his own, under penalty of the refusal of privileges. There is a kind of polarity—as mathematicians style it—to be observed in such matters. The law of each territory (including its rules of private international law) regulates the jural position, *with regard to the limits of its own physical operation*, of each person on the face of the globe. The law of his nationality, or of his permanent residence, or of the *situs* of the bulk of his goods, are particularly important, because they have so many opportunities of reaching him *manu militari*. But none of them has any sacrosanct claim to supersede the *lex fori*, as being the only proper law applicable to the person in question. When, therefore, the French Court wishes to know the English law regarding an Englishman domiciled in France, it is not met by a hypothetical body of English private law designed by the English legislator for domiciled Englishmen and for them only, but by a complete code instructing the English judge how to regard the jural position of every inhabitant of the earth's surface. And from this the French Court can extract the appropriate law for the case of persons who have to rely on the capacity of an Anglo-British subject who is a domiciled Frenchman.

"Dr. Bate makes the concession to the advocates of *renvoi* of recognising that if our law adopts the law of X. (the domicile) in a certain relation, and the law of X. refers it to the law of Z. *which accepts the reference*, the English Court should agreeably pass on to the law of Z. This seems to be at fundamental variance with his main thesis; and not, as he himself appears to regard it, a mere sacrifice of pedantic logic to common sense.[1] If England thinks the X. law the right one to apply to a class of persons on broad grounds of convenience, she enters on a dangerous path if she assumes that certain people are for some reason or other (accepted by X. and Z., but not regarded by herself as material), to be excepted from the class by way of complication. She cannot attribute to Belgians domiciled in France a consuming desire to live under the protection of the law of their nationality; because it is not to any conscious acquaintance with the difficult details of the law on the part of the *de cujus*, nor to any deference to the will of the Belgian State, but simply to the presumed general con-

[1] Dr. Bate regards the concession as necessitated, moreover, by *In re Trufort*. But there, there was a decision in a Court which was virtually a Court of the domicile; and such a decision is usually recognised as binding.

venience of subjecting a person to the law of his neighbours, that the law of X. is selected by the law of England for application. Consequently, she need not except the Belgian, any more than the Englishman or the Dane, from the protection of the French law: the foreign rule is not accepted as a command, but imported for convenience like a keg of butter (cf. p. 100).

"This brings us to the last remark which need be made. In the discussion of the subject, the law of a country is continually regarded as 'wishing' and 'willing' to apply. Outside its own area, as Dr. Bate points out, these terms have no meaning. Yet the discussion, in the hands of some writers, is conducted as though States were spiders, continually grasping after the flies which have left, or partly left, their web. The State is not necessarily concerned to make its law apply outside its own limits. But many continental theorists [1] treat the matter as though the sole question were that of securing to a State's system of private law what they consider to be its proper extra-territorial sphere. If the matter is looked at in this light, and the State's aggrandisement alone considered, no doubt the apologists of *renvoi* have an intelligible case. If English law, in dealing with a domiciled Frenchman's capacity, admits French Law simply *pour ses beaux yeaux*, and out of affection for France, no doubt it should admit the entire system—rules of private international law and all. But if it admits French law because of the supreme interest of individuals to live under like conditions with their neighbours, there is no reason why it should admit it *en bloc*, and every reason why it should not. The theory of *renvoi* is thus closely connected with the theory known as *étatism*—the doctrinal tendency to regard everything as subservient to the State, and the subjection of the political subject to the legal system established by it. Whether this will commend it to the English tribunals may well be questioned; but it is the fundamental basis of the theory.

[1] The Abbé de Vareilles-Sommières is a conspicuous exception.

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